MADRAS

HINDU RELIGIOUS ENDOWMENTS A

(ACT II OF 1927)

(BROUGHT UP TO DATE)

BY

P. RAMANATHA IYER, B.A., B.L.

THIRD EDITION

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1946

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PREFACE TO THE THIRD EDITION.

The Second Edition of the Madras Hindu Religious Endowments Act was published in 1931. In 1939, the Popular Ministry which was then in office, proposed certain important amendments to the Act of 1927, with a view to improving the administration of the endowments in the Province. Before the bill giving effect to the proposals was ready, the Ministry went out of office. Some time later, the Advisory Government appointed a non-official committee and asked them to report on the changes considered necessary. The Gommittee's recommendations in respect of certain changes considered to be immediately necessary were embodied in the Act of 1944. The other recommendations of the Committee were carefully examined by the Government and as a result of this the Amending Act of 1946 was enacted. This Act contains important amendments of a far reaching nature and these have been fully noticed in this book.

The case-law has been brought up to 31st August, 1946, and the rules have been made up-to-date. Some Acts which will be of constant use, have been published in the appendices.

6th September, 1946.

FIRST EDITION: 1928.
SECOND EDITION: 1931.
THIRD EDITION: 1946.

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MADRAS RELIGIOUS ENDOWMENTS ACT

(ACT II OF 1927)

[The Madras Hindu Religious Endowments Act, 1926: Amended, Madras Acts I of 1928, V of 1929, IV of 1930, XI of 1931, XI of 1934, XII of 1935, XX of 1938, XXII of 1939, V of 1944 and X of 1946.

INTRODUCTION.

By nature and constitution the East is characterised by religion and philosophy, and among Eastern people the Indians are pre-eminently religious. Gifts for religion and charitable purposes have always been considered in India as the most

sacred duty of man. Almost every Indian, whether Hindu or Muhammadan, makes some kind of gift, small or great, during his lifetime in the hope of securing a better state of existence in the life to come. This constitutional predilection and devotion to religion impels even the half-starving Indians of to-day to make the beggar at his door a partner in his scanty means earned with hard toil in famine times. Even mere show of religion commands respect, as is evinced by the reception accorded to the so-called mendicants by almost every Indian household. India may rightly be styled as the land of temples. Every town and every village has its own gods and goddesses, with large endowments for the due performance of their daily rites and ceremonies.

The proper maintenance of the temples and the due adminis-

Maintenance of temples and administration of endowments, a function of the State. tration of their endowments have always been considered in India as one of the primary functions of the State. Under Hindu Rule, the Rajas exercised through their officers real and direct control over all religious institutions

and endowments. The supervision of temple management was and is recognised in every Native State to be one of the essential functions of Government. As instances in point, the Native States of Mysore, Travancore, Pudukottah and Cochin may be mentioned.

(i) under Hindu

The Native Rajas were deeply interested in the well-being and the advancement of Hindu

religious institutions. Many of these institutions had been founded and endowed by their ancestors, and most, if not all, of them continued to secure periodically pecuniary contributions from the State.

Even under Muhammadan Rule, this duty

(ii) under Muhamof the State was not completely ignored
Except during periods when religious intolerance was at its worst, the Muhammadan Rulers of India considered
it expedient to make some provision against the deterioration or
decay of Hindu temples by neglect or peculation, and in some
instances even added to their endowments.

(iii) under the British rule. Early regulations. instances even added to their endowments. Under British Rule, there was for many years no enactment or regulation bearing on the management of Hindu temples. Regulation

XXX of 1810 in Bengal and Regulation VII of 1817 in Madras had the obvious intention and effect of continuing and maintaining the policies that had been in vogue under the Hindu and Mussalman Rulers. Not only was there a distinct recognition of the principle that it was a duty incumbent on Government to keep a strict watch over religious trusts and endowments, but practical effect was given to this principle by the exercise of efficient and stringent control over the management of Hindu temples through

the instrumentality of the officers of the State.

Early Government
From 1817 to 1842, there was general satisfaction that Hindu temples were being properly managed, and that the danger of temple funds being misappropriated by the managers had been reduced to a minimum. The supervision exercised by the Government over the management of Hindu temples during the period referred to was one of the many acts by which Government endeared itself to the hearts of its native subjects. This system of active supervision continued up to 1839.1

On or about 1839 an agitation was set on foot by the Christian missionaries that it was not one of the functions of a Christian Government to administer Hindu endowments and provide for the maintenance of Hindu temples and Muhammadan mosques. This, combined with other cases, to which we shall refer presently led to the gradual withdrawal of the Government management of Hindu and Muhammadan religious endowments.

Even before the complete withdrawal of the Government interference with the administration of Withdrawal of Government management. Hindu endowments, when the matter was under the consideration of the Government of India and the Board of Directors in England, the best and the

⁽¹⁾ See Statement of Objects and Reasons to Mr. Muthusami Jyer's Bill.

most experienced officers in India saw the danger of such complete withdrawal.

Thus Mr. Elliott, member of the Indian Law Commission, in a celebrated memorandum submitted to the Government of India, dated 1st March, 1845, stated as follows:—

"In the preamble of Regulation XIX of 1810 of the Bengal Code (with which that of Regulation VII of 1817 of the Madras Code corresponds), after reciting that considerable endowments have been made for the support of mosques, Hindu temples, etc., it is declared to be an important duty of every Government to provide that all such endowments shall be applied according to the real intent and will of the grantor." * * * *

"Without pronouncing upon the question whether the British Government is bound absolutely to maintain the principle set forth in the preamble of Regulation XIX of 1810 of the Bengal Code, and in that of Regulation VII of 1817, of Madras, it may be asserted, that at least it cannot renounce a duty so solemnly undertaken, and withdraw its officers from a charge imposed upon them under such a sanction, without an adequate provision for the due execution of the charge, so far as it has hitherto extended, by other agency. Whether Government was right or wrong in principle, in undertaking such a duty and charging its officers with such a trust, it would seem that it cannot righteously divest them of it where it has been assured, and leave the interests concerned without protection."

Referring to the same matter the Hon'ble Mr. Chalmers remarks:—"To make over the funds to the trustees, to be dissipated at their pleasure in vice and debauchery, will make the measure of withdrawing from interference with the religious institutions of the country more unpopular than it now is, and will be a cause of deep concern to the respectable portion of the native community, who will be able to discern no reason why the permanent good of the entire community should not be consulted in preference to the temporary gratification of a few individuals."

But the Court of Directors issued strict instructions for the immediate withdrawal of all Government interference.

In a letter to the Madras Government, under date the 10th August, 1840, the Governor-General in Council laid down the general principles to be observed in accomplishing the object of withdrawing the interference of Government and its officers in the administration of native religious institutions and the endowments

⁽¹⁾ Papers submitted to the House of Commons on Connection of the Government with Idolatry in India—compiled under the orders of the House of Commons, dated 1st August, 1849, pp. 415-416.

(2) Ibid., p. 277.

belonging thereto, viz., "that the administration of the affairs and funds of the native religious institutions should be vested in individuals professing the faith to which the institutions belong, and who may be best qualified to conduct such administration with fidelity and regularity, being responsible, together with their subordinate officers, to the courts of justice for any breach of the duties assumed by them which can be made the grounds of a civil action "

On the 12th June, 1841, the Madras Government issued instructions to the Board of Revenue according to the above principles, and on the 5th September, 1843, it was reported to the Government of India that the total withdrawal of all interference on the part of Government with native religious institutions throughout the whole of the province of the Madras Presidency had been accomplished; that is to say, all interference with the internal administration, and with the expenditure of the revenues, and also with the appointment of officers, but without any change in the management of lands belonging to such institutions which were before under the charge of Government officers, the question as to the final disposal of such lands being reserved for the orders of the Supreme Government, the net proceeds of the land in the meantime being payable to the newly appointed native administrators.1

Details of arrangement under which religious endowments were handed over to native agency.

(i) General.

(ii) For small pagodas in villages. (iii) For larger temples.

(1) The following are the details of the arrangement under which the administration of these endowments was handed over to native agency. The Parliamentary papers relating to Idolatry in India describe the details as follows:—

"The arrangements which have been made are various. The small village pagodas had not generally been under the charge of Government officers, but where such charge had been assumed, it has been resigned to the "Poojaree," who "is looked upon in the light of one of the functionaries entitled to mere fees, with the smith, carpenter, etc." In the case

of larger temples with more considerable endowments, two or more of the principal inhabitants, including generally the official head of the village or the curnum, have been conjoined with the poojaree in a committee or panchayat. Temples of greater importance, with a reputation and interest extending beyond the vicinity, have been placed under the charge of committees composed of persons of weight and industry solutions. mittees, composed of persons of weight and influence, selected from among the residents within a wider rauge. Endowments belonging to matums or gooroos, have been left to the care of the parties interested; and institutions of which the managers have been usually appointed by such matums, have been deemed to need no other superintendence.

(See Papers submitted to the House of Commons on Connection of the Government of India with Idolatry or with Mahomedanism compiled under orders of the House of Commons, dated 1st August, 1849, pp. 409, 410.)

Thus even after the withdrawal of Government Officers from

(iv) Temples in which the whole Hindu community is interested, as The arrangements for some of the great pagodas in which the whole Hindu community may be considered to have an interest, require a more particular notice.

The celebrated pagoda at Tiruppati, in North Arcot, held in high veneration throughout Southern India, and visited by multitudes of pilgrims from all parts, from whose offerings, together with contributions from parties

offerings, together with contributions from parties at a distance, an income is derived, amounting on an average to 1,09,873 rupees per annum, has been made over to the charge of an individual, the mahunt of a college of Byraghees, as sole trustee. It is from this pagoda only that a revenue has been drawn by the State. While the average income from offerings has been 1,09,873 rupees, the average disbursements have been no more than 32,528 rupees; and the large surplus has been carried to the account of Government. Less than a third part will suffice for all the customary expenses; in the disposal of the surplus he will be left, as it appears, to his own discretion, without any rules or precedents to guide him or by reference to which he can be made responsible.

The question of how this surplus revenue should be dealt with is not considered in the correspondence. The Collector thus sums up his report, adverting to it:—

"The case is, I trust, fully before the Board, 1st. The argument, from general experience, in favour of a sole manager, the impracticability of a joint management on the present occasion, and the confusion that is likely to follow it such is attempted, point out the expediency of placing the management of the temple, on its being given up by the Government, in the hands of one individual. The future will provide for itself, according to the circumstances of the times. 2nd. A fitter selection than the mahunt could not be made. In no way mixed up with the service of the temple, at the same time deeply interested in its worship and prosperity, identified with the tenets of the temple on the Dengala and Vadagala question, looked up to and respected by the community in general, and enjoying much personal consideration, there is every guarantee that the rights of individuals will not be infringed, and that the interests of the temple will be fully promoted. I have made it a point to ascertain the sentiments of persons in general regarding the mahunt, and all concur that the appointment of the mahunt would be acceptable and gratifying to all.

"Under the foregoing considerations I think it desirable that the mahunt

should be placed in charge of the temple.

"The Board fully concurred with the view taken of this subject by the Collector, and accordingly recommended that the Tiruppati Pagoda be placed under the sole charge of the mahunt and his successors.

"The Governor in Council concurred in opinion with the Board of Revenue, that the trust has been consigned to the individual who is in all respects, most likely to fulfil the duty undertaken by him with good faith and with satisfaction to the geat body of the worshippers.

"His Lordship in Council observed, that the petitioners, who object to

the nomination of the mahunt as sole trustee, advance nothing which has not already been fully and carefully considered by the Collector and by the Board, and do not suggest any other arrangement which is not more open to objection than that now sanctioned.

"The Board were directed to instruct the Acting Collector to carry out all arrangements connected with the appointment of the mahunt to his trust, with as little delay as practicable." (*Ibid.*, pp. 410-411.)

Ouestions remaining to be solved after the withdrawal of Government management.

the management of these endowments, and their handing over the institutions to the Hindu trustees and managers, two important questions remained to be solved.

(1) The question whether it was not advisable to retain the endowment lands under Government

management with a view to give due secu-(a) As regards the endowment lands. rity to the ryots, and handing over the income alone to the trustees and managers, and (2) the question of the disposal of the funds that had accumulated in the course of the management of these institutions under Government control.

Referring to the first of these questions, Mr. Elliott in his

memorandum above referred to says:-

The large pagoda at Conjeevaram, in the district of Chingleput, an establishment of great note and considerable revenue has also been made over to the charge of (b) Conjeevaram. an individual, against the opinion of the Collector, who "expressed strongly his conviction of the inexpediency" of such an arrangement, on account of the magnitude of the charge, arising from the animosity of the two sects concerned in the pagoda. The Board overruled

the recommendation of the Collector for a committee because they preferred individual management and responsibility, considering that such a committee as was proposed, constituted of m mbers from the different parties, could not administer the affairs of the pagoda with peace and good order, and because they were of opinion that there were herediary claims which could not justly be set aside. (Ibid., p. 411)

Two other considerable pagodas in this district, i.e., those in Trivellore and Sriperumbudur, have likewise been made over to individuals as dhurmakartas: the first, to the (c) Tiruvellore. (d) Sriperumbudur. jeer or high priest of the institution, ex officio; the second, to a person considered to have hereditary

right

The charge of the pagoda at Trinomalee, in South Arcot, "or e of the five great Siva Pagodas of Southern India," has been

(e) Trinomalee. made over to a committee of five native gentlemen, residents of Madras, "in the absence of all qualified parties resident in the district willing to undertake the trust" "The pagoda is situated in a very poor country, and is unsupported by the inhabitants of the neighbourhood or even of the District," while 'the inhabitants of Madras give great support to the pagoda generally," and a large part of its property has been acquired by donations from the same quarter. (bid, pp. 411-412.)

The great pagoda of Srirangam, in the district of Trichinopoly, has been committed to the charge of "two independent and respectable persons, in conjunction with (f) Srirangam.

of that description officiating in the committee in alternate years." Of the two independent trustees, one was formerly nazir of the Zilla Court, and now lives on his own means; the other is a large mirasidar. Both, it is said, were appointed with the concurrence of some of the most respectable persons connected with the pagoda. The latter (g) Rock Fort Temple in Trichinopoly.

Fort Pagoda, in the fort of Trichinopoly.

Another considerable pagoda in this district has likewise been consigned to a single trustee. (Ibid., p. 412.)

likewise been consigned to a single trustee. (Ibid., p. 412.)

"The order of the Madras Government, founded upon the instructions of the Supreme Government, and approved by the Governor-General in Council, directed that lands which had been assumed 'for the purpose of securing the public revenue, or in order that protection and justice may be afforded to the ryots,' should not be relinquished. It is, I believe, very generally true that the lands belonging to religious establishments which are under the management of the revenue officers, were originally assumed, because the management of the officers of those establishments was found to be detrimental to the interests of the ryots. The security of the Government revenue, I apprehend was seldom, if ever, the main object for the latter purpose. I do not conceive it to be necessary or advisable to retain the management of the lands for securing the Government revenue alone; but I concur with the Board of Revenue, and the many Collectors who coincide with them, in thinking it advisable to retain the management of the lands for the sake of the ryots. In my opinion it would be very prejudicial to the ryots to make them responsible for the lands which they have so long held immediately under Government, with all the advantages of a system which provides liberally for adversities of season and other misfortunes, and has a considerate regard to their means in general, not pressing the demands against them to extremity, and freely remitting balances which cannot be immediately recovered, to parties without either the ability or inclination to afford them such indulgence, who, having a temporary interest only will care nothing for the distress or ruin which sometimes the strict exaction of even the legitimate demand is calculated to produce, but will enforce it at all events, if they can, regardless of future results as affecting either the ryots or the institutions they represent, never granting a remission, but having got all that the resources of one year will afford, keeping the balance hanging over, to be recovered whenever a fortunate season shall furnish the means. In general, I think, the change would be much to the disadvantage of the ryots, and tend to their impoverishment. But more especially would this be the case were the productiveness of the lands to depend upon irrigation. In the case of lands held immediately of Government, there is a systematic attention to the means of irrigation; the requisite repairs are made promptly and efficiently, and the necessary expenses are defrayed with a liberal hand. If an accident occurs by the bursting of a tank, the breach of an embankment, or the stoppage of a channel, which prevents the irrigation of the lands of a village in one season, the crop of that season may be lost, but the damage will be repaired before the next arrives. In a village belonging to a pagoda, and under the management of its officers. on the contrary, such an accident would probably be fatal to its prosperity; and without an accident of such consequence, it is likely that from the neglect of ordinary repairs, the reservoirs and channels would gradually go to decay, and the cultivation would decline from year to year. It is justly observed by the Collector of Chingleput, that "experience has clearly shown that mere protection against the demands of unauthorized taxes, is not the only point necessary to preserve the actual cultivators and mirasdars, or hereditary landlords, from poverty and ruin for, should the controlling authority neglect the reservoirs or other means of irrigation, the cultivator and mirasdar will be equally impoverished, even perhaps without having to pay one single rupee of revenue, because the land, by cultivating which their daily bread is obtained, must in consequency remain fallow, or, should it be cultivated, will not, from a deficiency of water, yield a remunerating produce, whilst the demand is fixed and unfluctuating.

"These very causes have led to a great portion of the villages being taken out of the hands of the trustees and their agents; for, through their neglect and mismanagement, not only had the revenues decreased below the sums required for the maintenance of the institutions, but the Government peishcush or quit-rent remained unpaid, while large tracts of land that formerly yielded a support to the inhabitants, were abandoned. If the decay of the villages, and consequent decrease of revenue, affected only the interests of the respective institutions, I should be inclined at once to relinquish them to the charge of the trustees, but as I conceive the happiness and prosperity of a large body of people depend on the continuance of the villages under the control of the Government authorities it will, I think, be inexpedient to relinquish the management of them."

Referring to the second question as to the disposal of the surplus funds, the Hon'ble Mr. Chamier, in a memorandum submitted to the Government of India (dated 13th May, 1844) says:—

The right of Government to apply these surplus funds to purposes of general utility has long since been distinctly recognised upon a mature deliberation. In their despatch to the Government, dated 9th May, No. 5 of 1838.

the Honourable Court observe:-

"Para. 47. These recommendations, which were entirely concurred in by your Government, were supported by the following observations:—The question is whether it is competent to the Government to inquire into the endowments made by the State in

⁽¹⁾ Papers submitted to the House of Commons on Connection of the Government of India with Idolatry, or with Mahomedanism, pp. 420-421.

former times for religious and charitable purposes; and on discovering that they are more than sufficient for the particular purposes intended in making the endowments, to appropriate the surplus to other purposes by which the community will be benefited, instead of letting it be hoarded unprofitably, or applied to the private advantage of individuals. It appears to the Board to be not only unobjectionable, but positively a duty, on the part of Government, to interfere in such a case, and to take the appropriation of the surplus into its own hands. It might, perhaps, be applied to public purposes generally; but the Board think it advisable that it should be appropriated to purposes by which the inhabitants of the locality where the endowments were made particularly will be benefited. The establishment of schools would seem to be a very fit object, as well as the construction of roads and bridges.

"Para. 48. In these remarks we generally concur. We are anxious that the principle hitherto observed, of keeping the pagoda funds entirely separate from the Government revenue, should be rigidly maintained. We are of opinion that all grants and endowments should be, in the first instance, appropriated if possible, to their original purposes; when the funds are more than adequate to that end, instead of allowing them to accumulate without limit, they should be applied to purposes of general utility taking care that the particular district in which the endowments are situated should derive full benefit from the new appropriation of the surplus.

"Nor is this the first time that the right has been recognised. Its recognition is apparent in the Honourable Court's Orders of the 29th September, 1824, nearly 20 years ago, where they say:—

"The difficulty is, how to interfere so as to prevent the misapplication of the funds to mischievous purposes, without exciting the religious jealousies of the people. But yet we doubt not, that a line of conduct may be drawn by which, without infringing our religious liberty, or interfering with the most jealous scruples of the people, not only evil, where it exists, may be avoided, but something useful, especially in the shape of education, may be connected with the expenditure of the revenues often very large, of the native temples."

The right, in my opinion, is undeniable, and its exercise called for, in order to prevent the funds being misappropriated by the parties to whom the management of the pagodas has been transferred.

These funds are not private property, and cannot be claimed by any one. The grants under which the endowments were origin-

ally made were not personal grants to individuals, but intended for the maintenance of the institutions and the gratification of the people: and, after all the expenses of repairing the buildings, maintaining the establishments, and celebrating the prescribed festivals are paid the surplus may, with propriety, be employed in useful objects, such as the construction of made and bridges, for the benefit of the community. There cannot, indeed, be a more legitimate mode of expending it as regards the pagodas, or one more acceptable to the people; for whatever improves the communication with the large towns at which the pagodas are situated facilitates the access, and promotes the resort of votaries, to those institutions, besides benefiting the community in a pecuniary way, by cheapening the price of articles brought from a distance, which is one of the first effects of good roads as the saving in time, and in the wear and tear of cattle and conveyances, enables the owners of carts and bullocks to reduce their hire. This was one of the good effects immediately produced by the opening of the Great Western Road

Large disbursements have already been made for purposes of general utility from the accumulated funds of pagodas, and the discontinuance of the practice may have the appearance of casting a doubt upon the propriety of past appropriations; and, if any right otherwise than in the Government for past years should now be recognised/refunds may be claimed; but it is obvious that if the right to appropriate the future surplus funds is to be conceded to the parties who are now entrusted with the management of the pagodas, that right must equally have belonged to the Government for the period during which the institutions were managed by its officers, so that in whatever light the question be viewed, it is manifest that the funds now in deposit may be applied to works of public utility without impropriety, and without injustice to any one.

But I do not think the State should divest itself of the right of controlling public grants, but should rather reduce the excessive endowments, and adapt them to the wants of the institutions for the support of which they are intended, than maintain them on a scale far more than commensurate with the objects in view. *

To make over the funds to the trustees, to be dissipated at their pleasure in vice and debauchery, will make the measure of withdrawing from interference with the religious institutions of the country more unpopular than it now is, and will be a cause of deep concern to the respectable portion of the native community, who will be able to discern no reason why the permanent good of the entire community should not be consulted in preference to the temporary gratification of a few individuals.

Where a portion of the expense of public works now in progress has already been defrayed from the surplus pagoda funds, it seems to me to be inconsistent to decline completing them from the same source, as we have lately done, under an impression that we were not at liberty to authorize further disbursements.¹

Acting on the views stated above, Government decided that the accumulated funds in their hands should not be given away to the newly appointed managers, but should be utilised by Government in furtherance of purposes of public utility.

Thus, between the years 1839 to 1842 Government severed

Consequences of withdrawal of Government management. its connection with the management of Hindu temples. This change of policy led to the withdrawal of that control which had till then worked with such beneficial results. Between

the years 1842 and 1863 no supervision of any kind was exercised over the management of Hindu temples, though Regulation VII of 1817 still remained in force. In many cases in which the management had previously been in the hands of honorary trustees, the temples were made over to them and left to be dealt with by them without supervision. In cases in which the management had not previously been in the hands of hereditary trustees, new trustees were appointed by the Board of Revenue under the orders of

Mismanagement and embezzlement of endowed funds. Government, and, in a few instances, the sanad of appointment of trustee also contained a provision for regulating the course of succession to the office. The inevitable result of

this relinquishment of control was, that trustees were under strong temptations to embezzle temple funds, as the check produced by the general law in the absence of an active supervising agency was utterly inadequate to meet the exigencies of the case; that religious institutions, with large revenues were often dealt with by the trustees without a due sense of responsibility; and that mismanagement prevailed without check or restraint and misappropriation of temple funds became a thing of frequent occurrence. The evil grew from bad to worse until it came to a head about the year 1860 or 1861.

The necessity

Necessity for a new enactment. Passing of Act XX of 1863.

for producing a supervising agency being recognized and felt, Reg. VII of 1817 was repealed and Act XX of 1863 was passed. By this Act, local committees were appointed to exercise a form of supervision

¹ Papers on Connection of the Government of India with Idolatry, or with Mahomedanism, pp. 276-277.

vested in the Board of Revenue under Reg. VII of 1817, but their jurisdiction was limited to temples, the nomination of the trustees of which vested in Government or was subject to the confirmation of Government or of a public officer. Other temples which under Reg. VII of 1817 had been subject to the supervision of the Board of Revenue continued to remain, even after the passing of Act XX of 1863, in the unsatisfactory state in which they had been between the years 1842 and 1862. It was generally considered to be a serious defect in Act XX of 1863 that.

Defects in Act XX while it carried out the policy of severing the of 1863. connection of Government with the management of the Hindu temples, it made no provision for the exercise of any supervision over an important and large class of temples of which the trustees, though not originally hereditary became hereditary, between the years 1842 to 1863, and that such trustees were treated as though the temples had been under the management of the hereditary trustees from the very commencement. Other defects which have impaired the efficiency of the Act are (i) that although the temple committees succeeded to the possession and functions of the Board of Revenue, yet their possession and functions were not defined with sufficient clearness and precision; (ii) that they were not enabled to command funds for maintaining an office establishment and conducting a periodical audit of accounts; (iii) that they had no power to enforce obedience to their orders except by the tardy and cumbrous process of a regular suit, nor was provision made enabling them to obtain funds for conducting or defending suits connected with the temples under their jurisdiction; (iv) that committee members appointed under the Act held office for life and could only be removed for misconduct and by the procedure of a regular suit; and (v) that the provisions contained in the Act for the due and regular performance of the duty entrusted to committees of preparing registers of voters and conducting elections of committee members were utterly inadequate. Before this Act had been in operation for seven years, it was condemned by the native community at large to have utterly failed to check the evils and abuses that had been growing in magnitude since 1842.

Within ten years from the passing of Act XX of 1863, the

Attempts at legislation for making better provision for protection and control of endowed property. Hon. V. Ramiengar, then a member of the Legislative Council, brought the matter to the notice of the Government of Madras, and submitted a draft bill embodying suggestions as to how some of the defects could be remedied. In the course of his letter in

support of the Bill the Hon. Member said:-

"I have the honour to submit for the consideration of Government the following observations

In the Madras Presiregarding the present condition and management of Native Religious Institutions in this Presidency under the operation of the Law (Act XX of 1863) enacted for the governance of these institutions.

"The subject of providing for the proper care and superintendence of Hindu temples, mosques and other religious institutions consequent Ramiengar's Bill the withdrawal of the Government from all concern or connexion with them has been a vexed question now for more than a quarter of a century. Reg. VII of 1817 of the Madras Code after reciting that considerable endowments had been made for the support of mosques, Hindu temples, etc., declared it "to be the duty of Government to provide that all such endowmen'ts be applied according to the real intent and will of the grantor" and accordingly Government charged themselves with the management of all endowments, religious as well as charitable; but when they afterwards came to disconnect themselves from idolatry in India they saw the difficulty of renouncing a duty so solemnly undertaken and withdrawing their officers from a charge imposed upon them under such legal sanction, without at the same time adequately providing for the due performance of the trust by other agency.

"Whether Government was right or wrong in principle in undertalking such a duty in the first instance, and charging its officers with such a trust, they felt that they could not properly withdraw from it without sufficiently providing for the protection of the interest they were abandoning. A legislative enactment substituting some responsible agency in the place of the Board of Revenue and their local agents, who has the superintendence of the temples under Regulation VII of 1817 was accordingly felt and acknowledged to be absolutely necessary. But a long time elapsed before such a measure could be matured and Act XX of 1863 was eventually passed by the Imperial Legislature, just twenty years after the Government have virtually disconnected themselves from the administration of the institutions and the expenditure of their revenues. During all this interval there was this anomaly, that with Reg. VII of 1817 still in the statute books and the legal obligation imposed by it, the institutions were left practically unprotected.

"Act XX of 1863 was the product of about 20 years' deliberation and discussion by authorities both in India and England. Abstractedly it substituted perhaps the best possible machinery for that which had previously existed under Government

management. Yet, it is unquestionable that the Act, in this presidency at least, has failed to answer its purpose; that neither the committee, nor the trustee, nor the general public are satisfied with its working; and that the almost proverbial neglect of pagodas and the management of their endowments form a staple grievance of the people in every district or place where there is a religious institution of any note. Special instances of fraud and mismanagement and the reliable facts as to the condition of each pagoda and the appropriation of its revenues, can be obtained only by a thorough and searching inquiry, conducted on the spot by a Commission competent to take evidence, and insist on the production of accounts of receipts and expenditure. But it is a matter of notoriety that mismanagement and fraud are unfortunately too prevalent, and it cannot, I submit, well be otherwise. Government undertook the management of the native religious institutions they were in a very unsatisfactory condition. are told in the preamble of the Regulation VII of 1817, "there were grounds to believe that the proceeds of the endowments granted for the support of these institutions had been in many instances appropriated contrary to the intention of the donors, to the personal use of the individuals in immediate charge and possession of such endowments"; and it cannot excite surprise if, after a long term of Government management, and the surrender of the institutions into the hands of men practically uncontrolled and irresponsible one finds them and their endowments to have lapsed into a worse condition than even before. Under the Government Administration of the Pagoda Revenues there were, in the case of the large and more important endowed institutions at least, large yearly accumulation of the funds which had accumulated and which then amounted to several lakhs of rupees, were retained, and have been devoted to works of public utility and improvement calculated to add to the material and moral advancement of the country. The period of Government management was a period of low prices and agricultural depression. On the other hand the succeeding years of management by the trustees has been marked by high prices of agricultural produce and the steady increasing value of landed property. No doubt the trustees labour under great disadvantages compared with Government officers, who brought all the power and prestige of the Government to bear on the management of pagoda property, and it is also true that a considerable proportion of pagoda expenditure being in kind, the circumstance of the rise in prices is so far rather a source of loss than of gain to the pagoda revenues. Still after making every allowance for these disadvantages, if, as is the case, one finds that no pagoda in the country can show a decent sum on the credit side of its balance sheet, nor can boast of any surplus cash in its treasury, the conclusion is inevitable

that there must be waste, somewhere, of a species of public property, which under good management yielded not merely enough for the primary object of the endowments, viz., the support of the institutions immediately concerned, but a large surplus, happily, however inequitably applied to objects of the highest public usefulness and importance. If further evidence were wanting, I would point to the dilapidated condition of structures worth preservation if only for the sake of their antiquity and architectural value; to the reputed wealth of pagoda trustees once known to have been penniless; to the modest fortunes which even the agents employed by pagoda committees are said to have acquired; and to the scandal regarding pagoda mismanagement, which meets every one travelling up-country whether on business or pleasure."

Then after referring to the defects in the working of Act XX of 1863, and referring in detail to the provisions of his proposed Bill to remedy their defects, Mr. Ramiengar concluded his letter to the Government as follows:-"The great object of the legislation in respect of the extensive endowments which are now practically without efficient supervision is to secure, by a close and careful annual scrutiny of the accounts, of the revenues and the disbursements of the several institutions, the application of the fund to the purposes for which they were granted and to prevent waste and misappropriation. The power, therefore, of calling for accounts is all that need and can advantageously be vested in the Committee. To confer upon them vague and undefined general powers of control and interference seem to me to be both unnecessary and inexpedient, unnecessary because any violent and wrongful exercise of their powers by the trustees who are responsible for the immediate management of the institution will render them amenable to the Magistracy and to the established Courts, and inexpedient because, adverting to the character of the religious institutions in this presidency, the two great religions into which those directly connected with these institutions are divided, the sectarian zeal of them and the improbability of forming a committee not composed of the representatives and partisans of these factions, are openings which are sure to be afforded for intermeddling, and powers of general interference and control vested in the committees must prove mischievous by keeping alive and promoting that animosity and party spirit, which now too often interfere with the proper management of native religious institutions."1

This draft bill was circulated and opinions were invited from public bodies, revenue and judicial officers in the service of the

⁽¹⁾ Letters from the Honourable V. Ramaiengar, C.S.I., to the Chief Secretary to Government, Fort St. George, dated 17th March, 1871. See also G. O. No. 118, Judicial, dated 31st January, 1872.

Government and leading members of the Hindu community. There was a consensus of opinion as to the urgent necessity of amending Act XX of 1863, but the provisions of the draft bill framed by the Hon'ble Ramiengar were generally considered to be inadequate.¹

The Board of Revenue was of opinion that "though it would be an improvement on the existing law, it was radically incomplete and would certainly fail to attain its object." Government concurred in this view and appointed in the year 1876 a Committee with Sir William Robinson as President to draw up a fresh Bill.

The Committee was directed to prepare a draft Bill which would place matters on a proper footing without throwing the responsibility of the management of religious establishments on the Government. The Bill submitted by the Committee proposed (1) the abolition of the local committees; (2) the centralization of authority in a handsomely salaried Board to be established in the town of Madras; and (3) the inclusion, under the jurisdiction of this Board, of endowments made centuries ago and now managed by the founder's descendants,—endowments which never came under the control of the Native Government and were left exempted from direct official supervision by the Act of 1863.

In the Statement of Objects and Reasons appended to the Bill the Robinson Committee said:—"The draft Bill will be found in the main to be merely the adaptation of the law of England as applied to Charitable Trusts, to Hindu Religious Trusts and Institutions in this Presidency. This, we are convinced, is a safe basis to proceed upon; for where the conditions and circumstances to be dealt with are more or less similar, those provisions of the law and machinery of administration which have been found by experience during a long course of years to answer in England may confidently be applied in legislating for this country."

"We abstain from entering at any length into the question of the extent to which the property of Religious Trusts of all kinds in this Presidency has become wasted and deteriorated under the almost uncontrolled mismanagement and malversation which have now prevailed for nearly forty years; and we likewise refrain from further urging the inefficiency of the law as it stands to restrain this growing evil. Both questions have undergone full and protracted discussion on all sides; and it may be affirmed that the almost universal consensus of opinion, Native and European. Official and Non-official, conclusively points to a very general neglect of trusts, and to unchecked waste and spoliation of the

⁽¹⁾ Vide Statement of Objects and Reasons to Mr. Muthuswami Iyer's Bill.

valuable property assigned in former times for the support of the religious institutions of the country. The weakness of the law is established by the fact that this grievous condition remains unarrested and almost unchallenged in the Courts of Law. The voluminous records connected with the Hon. V. Ramiengar's legislative proposals in 1872 may be consulted on both points. It is sufficient to call attention in this place to the following Extracts from the Proceedings of the Board of Revenue in which they passed in review the replies of local officers and recorded their own conclusions:—

"The Board entirely concur with the Government pleader as to the present insecurity of religious and charitable endowments, and as to the extent of the misappropriation which is going on silently, because it is no one's business to move the Courts, and because the ears of the Executive are closed to all complaints."

Again-

"It is beyond the possibility of a doubt that if Hindu religious endowments are to be protected from wholesale misappropriation and, in many cases, ultimate extinction for the benefit of a class of people who make the worst possible use of the money, wasting it in profligate expenditure, the existing law must be altered. The papers communicated to the Board by Government are conclusive on the point; and the references which the Board have made have elicited a great mass of opinion to the same effect, which is unanimous so far as regards those who have any practical acquaintance with the subject, and is fortified by as many specific instances of observed misappropriation as could be expected in the present condition of affairs.

Although we had thus before us specific instances of misappropriation brought to notice by the local Revenue Officers, still, with a view to meet as fully as possible the wishes of the Government of India that "the fullest information available may be supplied as to the actual facts of the misappropriation of the funds of the endowments," we requested the judges of the several districts to furnish us with particulars of cases which may have come officially under their cognizance in their judicial capacity. Their replies were collected and placed as Appendix A (annexed to the report) while the cases of malversation noticed by them were thrown together for convenience of reference in Appendix B, which contains also the instances adduced by the Revenue Officers. The cases thus brought together, though sufficiently numerous in themselves, are perhaps few compared with the vast mass of property affected,

⁽¹⁾ The specific cases of malversation alone referred to were collected and placed as Appendix B to the report submitted by the Robinson Committee.

and the extent to which malpractices are known to prevail; but the number of cases which have actually come under official cognizance is no true measure of the existing state of things. On this point, we may call attention to the remarks of the District Judge of Trichinopoly which present the matter in a clear and practical light.

That learned Judge in the course of his letter, dated 19th July 1876 (No. 330), said:—

"It would however be a great error to infer from the paucity of suits on the file of the Court, that on the whole the Act works well and may be regarded as fairly popular, the truth being that the Act is decidedly unpopular and works very badly.

It is no matter of surprise to me that there have been so few suits under this Act:—The wonder is that anybody can be found willing to hazard so much for a purpose that does not immediately touch his private interests.

The Act permits any person who has the right of worshipping in the Temple to bring with the permission of proper authorities, a suit against the trustees of the Temple for misfeasance, misappropriation of Trust funds, etc.; but the ordinary worshipper has no means of inspecting the accounts kept by the Trustees, and whatever may be the nature of the suspicions entertained by him as to misappropriation of Temple funds he would find it exceedingly difficult to verify his suspicion even in cases where specific sums of money are supposed to have been misappropriated, and his difficulties would be increased manifold when the offence consists in supplying the Temple with inferior sorts of oil, ghee, rice and the like, when it is the duty of the trustees to supply these articles of the finest quality. Suppose, however, a worshipper actuated only by a pure zeal for the service of the Temple accumulates facts against the trustees which the District Judge considers, sufficient to warrant him in giving permission to bring a suit, then the suitor has to pay stamp duty, (often very heavy), to deposit batta for summonses, etc., before the suit can be heard; he has to contend against the whole staff of Temple officers who, to a man, will be against him, and he finds that to prosecute his suit he must spend large sums of money out of his own pocket, and is brought face to face with the contingency that after all he may not succeed.

In truth, the only persons who possess sufficient knowledge of the conduct of business in the Temples to give them a chance of success in the Civil Courts are the very persons whose interest it is to keep quiet and carry out the orders given to them by their masters, the trustees. These pagoda servants are appointed and dismissed by the trustees whose creatures they are, and it would be too much to suppose that they would, for no personal benefit

to themselves, incur the odrum, expense and risk of bringing suits against the persons on whom they depend for their daily bread.

The result then is that the Act affords no remedy that can be put in force against the trustees whose action is practically uncontrolled. And that legislation in some form or other is required is the opinion of every Hindu with whom I have conversed on the subject.

I take it that hereafter all Religious and Charitable Endowments in this Presidency will be placed under the direction and control of a Central Board sitting in Madras, and the question is whether under this new arrangement the District Committees should

be retained or dispensed with.

That hitherto they have been failures, no one who has studied the subject can doubt, but I confess I am of opinion that their inefficiency arises from defective wording of the Act rather than from want of interest in the well-being of these institutions. I should have been glad to have seen a scheme devised which would have retained these local Boards, enlarging their powers and placing the trustees entirely under their authority with an ultimate appeal to the District Court.

But if there is to be a Central Board in Madras, it would I think be worse than useless to retain them. They would not work in harmony with the Central Board. The direct controlling authority of the latter would be filtered through the Local Board and thus lose half its power and the two Boards would soon appear

in antagonism.

A Central Board accessible to complainants and armed with adequate powers of investigation, will do much to prevent or correct abuses up-country, and I believe that the influence of such a Board would increase yearly. Such, at all events, is the experience in England of the value of the Charity Commission, and I see no reason why a Board of the same kind should not prove equally influential and beneficial in this country."

The administrative machinery provided for by the Robinson Bill consisted besides the trustees, and others acting in the management of various religious institutions and trusts, of a Central Board at Madras, formed on the model of the Board of Charity Commissioners in England. It was proposed to strengthen the hands of this central authority, by the appointment in addition to the Hindu members, of an European barrister of standing capable of advising on all legal questions coming before the Board. "We have not attempted, and we do not deem it advisable, to fix by law the proportion in which the different sects of the Hindu Religionists of the Presidency shall be represented on the Board. It would be exceedingly difficult and embarrassing to define this

bylaw; and after all, it would hamper the Government in selecting proper men. We think it preferable to leave the matter to the discretion of the local Government who will, no doubt, act with the advice of the Board of Commissioners in such a matter.

We will not encumber this report with the details of the varied relations in which it was proposed that the Board should stand towards the trustees and local managers, whether, as authoritative advisers, framers of schemes of administration, auditors of accounts, references in cases of sectarian differences and the like; nor is it necessary to notice at length the various duties, powers and responsibilities of trustees as set out in the Bill. It is sufficient to state that, on the whole, the Bill followed as closely as local circumstances permitted the analogy of the Charity Commissioners in England, which had proved so successful, and that the control of the civil courts over the acts of the Board and trustees alike has been carefully preserved throughout the Bill. In short, it has been the endeavour of the framers of the Bill while rendering the measure as practicable and efficient for its purpose as possible, to make it also acceptable to the Hindu community at large.¹

The main features of this Bill were the establishment of a Central Board with paid members and the extension of control over temples of all classes. This Bill was forwarded in due course to the Government of India and the Secretary of State for India. The Secretary of State in his despatch No. 127, dated 27th May 1880, wrote to the effect that he had no objection to the introduction of the Bill into the local Legislative Council, but, that, as the subject was one of general importance, it should not be passed into law until he had had an opportunity of obtaining the opinion of the Government of India. The Government of India, however, in their letter, dated 9th March 1881, said that they were of opinion "that it was not desirable to proceed with this legislation during the next few months," and the Government of Madras, in deference to the wishes of the Government of India resolved to take no further action in the matter.²

The subject was next taken up by Mr. Carmichael a member Carmichael's Bill of the Council, who on the eve of his retire-(1883). ment in December, 1883, drew up a bill different in many respects from Mr. Robinson's Bill of 1877. This Bill aimed at the substitution of District Boards constituted under the Local Boards Act in the place of the Central Board in the Town of Madras and at the exemption from all control of religious endowments under the management of hereditary trustees.

⁽¹⁾ Statement of Objects and Reasons to Robinson's Bill and the letter from the Robinson Committee to the Government of Madras, dated 17th November, 1877.

(2) See Statement of Objects and Reasons to Muthuswami Iyer's Bill.

Mr. Carmichael was of opinion that the changes recommended were such that the Robinson Committee Bill should be modified throughout. He submitted for the consideration of the Governor-in-Council another Bill prepared in accordance with the views entertained by him.

In the course of a minute submitted along with his Bill Mr. Carmichael said:—This Bill "vests in the District Boards, which the new Local Boards Act will constitute, the power of declaring that any religious establishment in the District is one to which the Act shall apply. Where the endowment is very small or well managed, the Board will possibly leave it alone. Under the present Act, religious establishments are divided into two classes—those under the management of hereditary trustees and those not under such management.

"Where the funds of a religious establishment show a surplus, such surplus or any portion thereof may, with the approval of the District Board, be applied by the Committee or trustee for the charitable purposes of education, hospitals, and sanitation in the neighbourhood.

"The rules and forms to be framed by the District Board and the annual reports to be published by them, coupled with the provisions noticed already will, it is believed, be excellent incentive to good management all round. Meanwhile the control of the District Board, being exercised "from without" will not involve the cost of large establishments, or other expenditure injurious to the interests of the institutions concerned."

On receipt of Mr. Carmichael's Bill and his report, the Local Government appointed another Committee (G. O. dated 5th March 1884, No. 58, Legislative) to report upon the administration of Religious Endowments in this Presidency. This Committee submitted its report on the 19th March, 1886, in the course of which they state:—

"The original intention (of this committee) was to take both Hindu and Mahomedan Endowments under consideration; but after one or two sittings, it became clear (1) that owing to the comparatively small number of Mahomedan institutions in this Presidency and to the fact that there was no widespread complaint as their mismanagement, there was no such urgent need for legislative interference, as the circumstances of Hindu endowments called for; (2) that owing to the difference of condition, social and religious of the two institutions, it would be impossible to control them by a mixed central authority, composed partly of Mahomedans and partly of Hindus. These obstacles to bringing the endowed institutions of

⁽¹⁾ Letter dated 8th December, 1883, to the Government of Madras.

the two religions within the scope of one legislative enactment, having been prominently urged by the influential member of the Mahomedan community, who was associated with the committee, it was decided that, for the present, legislative action, in connection with the Mahomedan endowments, was not called for and the Honourable associated member for the Mahomedan community retired from the committee.

"In considering whether we should advise that the measure proposed by Mr. Carmichael should be adopted in preference to a measure drawn on the lines of the Bill in 1878, we recognised that the measure had much to commend it. It involved the least disturbance to existing arrangements, and it proposed to make use of existing local institutions and would thus probably result in a wider appreciation of the value of local government by elected representatives of the people. It met the great defect of the Bill of 1878, in that it substituted local for the central authority proposed under this Bill. On the other hand, we felt that the present state of the Hindu religious institutions and their endowments demanded greater and more efficient control and supervision than they were likely to receive at the hands of unpaid bodies of men, many of them in little or no way interested in their improvements, and the more we considered the question, the more clearly it appeared to us necessary to place the ultimate control of these endowments in the hands of a highly paid body of officials, with large central authority. Their present unsatisfactory condition has in a great measure been the result of the want of local interest in their welfare, and the correction for this is not to be found in any increased local powers, but in the institution of a strong small central body which shall possess real power and real responsibility in the management of the endowments entrusted to their care.

"For these reasons, we felt that the lines upon which reform should proceed were to be found in the Bill drafted in 1878 by Sir W. Robinson's Committee."

Mr. Sullivan's Bill also did not proceed further.

Muthuswami Iyer's appointed to consider the same subject with Mr. Muthuswami Iyer as President.

This Committee went fully into the whole question, and prepared a Bill and submitted it to the Government of India

Even this Bill did not meet with the entire approval of the Government of India who returned back the Bill for further consideration of the Local Government. Mr. P. Chensal Rao's Com-

⁽¹⁾ Statement of Objects and Reasons to Mr, Sullivan's Bill.
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mittee was appointed in 1898 for revising the Bill submitted by Mr. Muthuswami Iyer.

In appointing this Committee (Chensal Rao's Committee) the Local Government desired that the Committee in revising the previous Bill, should make the proposed legislation acceptable to the Government of India, by taking care to maintain intact the policy of Act XX of 1863; and consequently this Committee expunged from the previous Bill all such provisions as had even the appearance of permitting, in ever so slight a degree, the interference of the Executive in the Administration of the Endowments of the religious institutions. The Committee said in the course of their report:—

"Pursuant to the policy of Act XX of 1863, we have maintained in the Bill the distinction between temples which have been always supervised by hereditary trustees, and those which have been supervised by non-hereditary trustees, whose appointment has been subject to sanction of Government or its officers, before it severed its connection with the management of the institutions. As we have made all the main provisions of the Bill which vest in committees powers of superintendence and control over trustees applicable to the latter class of temples only, leaving the misconduct of trustees of the former class of institutions to be dealt with by the civil counts under the ordinary law at the suit of parties interested, we have, at the same time, imposed on hereditary trustees the duty of maintaining regular accounts and submitting the annually to the committees concerned for examination and publication; and we have authorised the committee to examine the cash balances of the temples once a year. But beyond this, the trustees of these institutions have not been in any way subjected to the control of the committee or subordinated to them. are not required to obey any orders of the committees in regard to the regulation of expenditure or in any other matter; and the commitees have not been authorised even to call upon trustees to furnish any information in regard to the management of the temples, their duty being limited to filing a suit in a civil Court for the correction of abuses in the same way as other persons interested in the proper maintenance of the institutions might do if the affairs of the institutions were mismanaged or the funds misappropriated. this connection, we wish to point out that in providing for the proper maintenance and periodical publication of accounts of these institutions we have done nothing more than extend to religious endowments the provisions of S. 19 of the Indian Trusts Act applicable to private Under this section the trustee is bound to keep clear and accurate accounts of the trust property, and at all reasonable times, at the request of the beneficiary to furnish him with full and

accurate information as to the amount and state of the trust property, but the provisions of the section are not applicable to religious or charitable endowments, which have been expressly excluded from the scope of the Indian Trusts Act. It was, therefore, found necessary to re-enact them in the present Bill. There can be no objection on principle to the extension to public endowments of the provisions in question which have been found necessary for the protection of private trusts; and one need hardly say that, unless accounts are regularly maintained by the trustees and made accessible to the beneficiaries, it will, in the majority of cases, be impossible for the latter or their representatives to prevent frauds or to seek redress in the Civil Courts when such frauds are committed. In the absence of regular accounts the persons interested in the proper administration of trusts will have to resort to courts for the correction of abuses on mere rumours of mismanagement and the judge himself will, when sanction is applied for to institute a suit, have no materials before him to determine whether the sanction sought should be granted or We consider further that the annual examination and publication of accounts is necessary quite as much in the interests of the trustees themselves as in those of the beneficiaries; for, while, on the one hand, the accounts will furnish the beneficiaries, with some evidence to go upon in finding out whether or not the trusts have been properly administered and prevent the trustees from preparing false accounts for production in course of justice to suit the exigencies of litigation, they will, on the other hand, serve to a great extent to protect the trustees from false and malicious imputations of fraud and misconduct. No honest trustee will object to the production of his accounts and considering its great utility, we trust that the Government of India will see fit to sanction the retention of the provision we have introduced.

"A bill of the kind now proposed, though it may not secure completely and effectively the national funds set apart for the support of Hindu religious establishments from peculation, will go a very considerable way in making the machinery provided by Act XX of 1863 workable, and thus be productive of beneficial results. If to the machinery provided by the present law be superadded a Central Board in the Presidency town composed entirely of paid unofficial persons similar to the Board of Charity Commissioners in England to supervise the proceedings of the local committees the Government will, irrour opinion, have done all that lies in its power to protect the funds from peculation and waste without departing in the slightest degree from the principle of religious neutrality. When a Central Board of this kind is considered necessary in a country like England noted for its wealth and public spirit, it is needless

to point out that it is far more necessary in this country to supervise the proceedings of the local committees.

We are most anxious that the law should, without delay, be amended at least to the extent proposed in the revised Bill now

submitted by us.

In conclusion, we have to point out that the Government of India seem to be under a misapprehension in thinking that it is only those sections of the Hindu society who have acquired western knowledge and become imbued with western modes of thought that are in favour of increased powers being taken for the regulation and control of religious endowments, and that the general feeling of Hindus is not only, not in favour of legislation for the purpose, but would even resent it. We can confidently state that so far as this presidency is concerned it is a matter of complaint with the conservative sections of the Hindu community that Government has not seen fit to make adequate arrangements for protecting Hindu public religious endowments from peculation and waste; and there can be no doubt that any legislation for providing a workable machinery for the superintendence and control of the trustees and managers of these endowments will be welcomed by all classes of the community, with the exception of such of the trustees and managers themselves as, from interested motives, are averse to any efficient check or supervision being placed over them. It seems probable that it is from the petitions and protests submitted or inspired by the latter that the Government of India has derived the impression that the proposed legislation is disliked or resented by the conservative sections of the community.1

Such were the various abortive attempts made from time to time in the Madras Presidency for the removal of the defects in the Religious Endowments Act (1863) so far as this Presidency is concerned

Nor was the activity in respect of securing a Bill for the better management of Religious and Charitable Endowments of the country confined to the Presidency of Madras alone.

On or about the year 1904 the Honourable Mr. Anantha
Anantha Charlu's Charlu submitted a Bill for the better management of Hindu Religious Endowments.

On 14th March 1908, the Honourable Dr. Rash Behary
Ghose submitted a Bill to the Government of
Dr. Rash
Ghose's Bill.
India, called the Public Charities Accounts Act,
to give greater facilities to the public for calling for and inspecting the accounts of public charities.

⁽¹⁾ Letter submitted along with Mr. Chensal Rao's Bill No. 1066, dated 23rd September. 1899.

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In the course of the Statement of Objects and Reasons to the Bill, the member in charge said:—

"The object of the Bill is to prove a simple procedure which would enable the public to obtain inspection of the accounts of public charities.

There is reason for suspecting that considerable portions of the revenues of these charities are misspent or squandered on useless objects. A regular inspection of accounts by the public would be an effective check upon such malpractices where they exist, and it is highly desirable in the interests of these charities to allow the public every reasonable facility for such inspection.

The Bill does not impose any new duty on trustees of public charities. The law as it stands gives sufficient powers to the Courts to direct accounts when once a suit has been instituted. The duty of keeping proper accounts, however, is not always observed by such trustees, and experience has shown that this duty is likely to be neglected unless the members of the public who are interested in the charity concerned are allowed the means of calling for and inspecting accounts without undertaking the burden of a suit.

The Bill by requiring the previous consent of the Advocate-General or some officer specially empowered by the Local Government provides ample safeguards against its provisions being utilized for any indirect or other improper purpose."

Dr. Rash Behari Ghose's Bill was not proceeded with by the Government.

The subject was again taken up in 1920 and the Charitable and Religious Trusts Act (XIV of 1920) was passed by the Imperial Legislature.

In moving for the introduction of this Bill in the Council, the member in charge of it, thus justified the necessity for a legislative provision to safeguard the religious and charitable endowments in all parts of the country:—

"The Religious Endowments Act (XX of 1863) was the result of the decision of the Government to divest its officers of all direct superintendence and control of religious and charitable endowments in India, transferring their functions to managers or managing committees, and merely

making provision for intervention by the Civil Courts on appli-

⁽¹⁾ See Statement of Objects and Reasons to Rash Behary Ghose's Bill. This Bill was circulated to the Local Governments and other heads of departments, and although the opinions recorded were entirely in favour of legislation towards greater control over the management of such institutions and their endowments, still the Government of India was not willing to

cation made by any person interested in a particular institution. This policy, however, did not long remain unchallenged, and since 1866 there have been constant complaints, especially in the Madras Presidency, as to the inefficacy of the Act to prevent the squandering or misappropriation of the funds of such endowments, and suggestions for its amendment have from time to time been made to the Government of India. Mr. Ananda Charlu in 1897, Mr. Srinivasa Rao ii 1903 and Dr. (now Sir) Rash Behary Ghose in 1908, for example, promoted amending Bills, but none of them became law. More recently in 1911 a private Bill was introduced in the Bombay Legislative Council by the Hon'ble Sir Ibrahim Rahimtoola to provide for the registration of all charitable trusts exceeding a certain value and for the annual audit of the accounts of such trusts by auditors approved by Government. Endowments of a purely religious nature were not included, but the contents of the Bill made it clear that the ultimate object was to press for legislation for religious as well as secular trusts. About the same time a private bill was promoted by two non-official members of the Madras Legislative Council to provide for the regular publication of the accounts of all religious endowments above a certain value and for their audit by an officer to be appointed by the District These proposals led the Government of India to reconsider the policy in force since 1863. In March 1914 the whole subject was discussed at a mixed conference of official and nonofficial gentlemen representing the Hindu, Muhammadan, Sikh and Buddhist Communities. The present Bill, which is the outcome of the deliberations of that conference, has as its object the simplification and cheapening of the legal processes by which persons interested can obtain information regarding the working of both religious and charitable trusts, and the exercise of a more efficient control over the action of trustees. The Bill provides that any person interested in a trust may apply by petition to the District Judge for an order directing the trustee to furnish him with information as to the nature and objects of the trust and of the value. condition, management and application of the subject matter of the trust and of the income belonging thereto, or as to any of these matters, and also directing that the accounts of the trust shall be examined aid audited. Failure to comply with such an order of the Court would be deemed a breach of trust. In order, however, that such applications should not lead to protracted and contentious litigation the Court is debarred from trying any question of title between the petitioner and any person claiming title to the trust, or any question as to the existence or extent of any trust. Under

undertake legislation which might in any way be interpreted as interfering with the religious observances of the people.

the Bill it will be left to those interested to move in the matter; the initiative will not rest with Government, nor will anything be done where no one is sufficiently interested to take action. When the Court is moved the proceedings will be simple and expeditious; they will be held in the presence of all parties, and the order passed will be a judicial order of the Court."

It will be seen that throughout these proceedings there has been one outstanding feature, that the best, the most thinking minds and the educated Survey of the situation in 1919. classes of the Hindu community had been decidedly in favour of legislation towards greater Government interference with religious endowments, and that the Government was very unwilling to undertake legislation that might be interpreted, in any manner, as a desire on the part of the Government to meddle with the religious affairs and institutions of the Hindus, and to take up the management of their properties. During the period of Mr. Ramiengar's Bill and the other Bills that followed, the events of the Great Indian Mutiny were fresh in the minds of the administrators; and the religious scruples that led up to it had not been forgotten. These fears of the Government were kept alive and were fostered by constant petitions and incessant representations from the heads of mutts and the trustees and managers of temples. To these were added the voice of the Christian missionaries who were always against a Christian Government taking up and managing Hindu, Mahomedan and other non-Christian religious institutions. And, on one or two occasions when the matter was ripe for introduction in the legislative councils, the hands of the Government were engaged with more pressing and urgent measures that led to the natural postponement of the question of the reform of Hindu temples and endowments. Matters stood thus, when, in 1919, the Great Reform Act was passed. larger element of the people's elected representatives was introduced in the Indian Legislatures, both Imperial and Provincial. The law-making body was made more popular and democratic. result was that a long felt legislative measure, which a foreign

Government unacquainted with the real sentiments of the people feared to undertake, was taken up by a minister of the Government chosen as their leader by the people's representatives in the Local Legislature.

Thus a Bill (No. 12) was introduced in the Madras Legislature in 1922 by the Chief Minister to repeal Act XX of 1863¹ and codify the law in accordance with the requirements of the times and in consonance with public opinion.

The following extracts from the Statement of Objects and Reasons with which the Hindu Religious Causes that led up Endowments Act of 1923 was introduced into the Council would indicate the strong necessity that was felt for such a measure:-

to the introduction of the Bill of 1922.

"There is widespread dissatisfaction with the management and control of religious institutions falling under sections 3 and 4 of the Government of India Act (XX of 1863). In this Presidency opinion is unanimous that the inadequacy of the provisions of that Act to check the maladministration and misuse of the trust properties is largely responsible for the present condition of these institutions. Various efforts have been made from time to time to introduce legislative measures for the removal of the many abuses that admittedly exist in the administration of these endow-Several committees were appointed to report upon the state of the existing law and to make suggestions for its modification. Several private Bills on the subject were also introduced both in the local and in the supreme Legislative Councils. The recommendations of the above committee and the Bills above referred to, however, fell through as they were considered either too wide in their application or were too elaborate in this provisions or were inconsistent in certain respects with the principle and policy on which the Act XX of 1863 was based

The principal defects in the working of the Act of 1863 are-

- (1) there is no provision in it for the exercise of supervision over the large and important class of endowments referred to in section 4 of the Act;
- (2) the system of suit by parties interested is costly and had proved inadequate to guard against dishonesty on the part of trustees and members of committees:
- (3) the powers and functions of committees are not defined with sufficient precision:
- (4) there is no provision enabling committees to raise funds for the purpose of carrying out their duties;
- (5) committees cannot enforce their orders save by regular suit to compel obedience;
- (6) members of committees hold office for life and cannot be ousted save by regular suit;
- (7) the provisions contained in the Act for the due and regular performance of the duty entrusted to committees of preparing the registers of voters and conducting elections of committee members were utterly inadequate; and
- (8) there are no provisions in the Act requiring periodical audit of accounts kept by trustees.

The amendments required in the Act of 1863 to remedy these and other defects are so many that it has been considered the preferable course to repeal it altogether and enact a self-contained piece of legislation dealing with the whole subject of Hindu religious endowments in this Presidency.

The main object of the present Bill is to ensure the efficient administration of Hindu religious endowments in this Presidency, and if the principle of strict religious neutrality of the executive Government embodied in the Act of 1863 has been departed from in some of the provisions of the present Bill, it has been donemerely to secure this end. The change in the character of the executive Government and the fact that religious endowments are a transferred subject in charge of a Minister responsible to the legislature justify this departure. The Bill aims at efficient control. over all classes of Hindu public religious endowments, though certain special privileges have had to be accorded to endowments falling under section 4 of the Act of 1863 especially in the matter of succession, liability to inspection, removal from office, etc. It has to be remembered that such endowments have since 1863 been left practically to themselves. Proprietors of ancient zamindaries are trustees of some of them. Others have, as trustees, members of the Nagarathar community, who are generally regarded in this Presidency as not merely liberal endowers of temples but efficient administrators of the endowment in their charge. Mutts have also been deliberately included within the scope of the Bill as they are endowed with large properties dedicated for public purposes and as complaints of mismanagement have in the case of several of them been pronounced. The Bill provides for regularly constituted committees to supervise and control the management of the religious endowments. The members of such committees will be partly elected and partly nominated. The term of their office has been limited to five years, as the life membership provided by section 9 of the Act of 1863 is, as already stated, acknowledged on all hands, as one of the serious defects of that Act; provision has been made for the maintenance by committees of proper registers of the endowments over which they exercise supervision, and also for the preparation and maintenance of a record of the origin and history of the endowments committed to their care. Presidents of committees are also to be definitely invested with the power to inspect moveable and immoveable properties belonging to, and all records, etc., connected with the management of, religious endowments; and specific provision has been made for the levy of contribution from such endowments for meeting the expenses of the committees. The Bill also gives committees power to settle dittams, and Government will have power to make rules enabling committees to control

establishments and intervene in the internal administration of temples. Care has been taken to provide that the decision of the committee the Government, the Collector, or the court should be final in respect of several matters and this will, it is hoped, effectively, put an end to the costly pastime-which has in recent years prevailed—of people engaging light-heartedly or for factious or sectarian reasons in litigation relating to religious endowments. In cases where a temple or other religious endowment attracts large crowds, and local authorities have to make special sanitary and other arrangements, the payment by trustees to such local authorities of contributions from the funds of endowments has been made This is in consonance with the provisions of the Madras District Municipalities Act and the Madras Local Boards Act. Specific provision has also been made for the diversion of the surplus funds of religious endowments for purposes of public utility other than those for which they were originally intended. power to order such diversions is vested in the courts, and the principles to be observed in ordering such diversion are those which courts ordinarily follow in applying the "Cypres" doctrine. During resent years a considerable number of schemes have been settled by courts for the adminiseration of specific religious endowments, many of which have proved unsatisfactory; and it is felt in is even worse than administration under the Act of 1863. These schemes are however of varying complexity and have settled many matters which do not pertain to mere administration, and some of which do not fall within the purview of the Act of 1863 or of this Bill. The Bill therefore contains only an enabling provision in this respect. An application may be made to a court by a committee or a person, whose rights as trustees have been affected, for the abrogation or modification of a scheme and for a declaration that the new legislation will apply to the endowment in question. The Bill exempts from its scope minor village religious institutions. except in such matters as the maintenance of proper accounts. Long established customs and usages in temples are sufficiently safeguarded, and it is proposed to prevent the executive Government from interfering with Hindu public religious endowments except in the manner approved by this law.1

When this Bill was first published in December 1922 it naturally evoked considerable public interest in the Presidency and there was a wide démand that some appreciably long time should be given to the public to consider the provisions of the Bill in detail and to submit their criticisms. Even as it was, the Bill met with wide-spread opposition and over two hundred representations were made

⁽¹⁾ Notes of clauses were also added to the Statement of Objects and Reasons explaining the several detailed provisions of the clause of the Bill.

to the Legislative Council and the Select Committee disapproving of the important provisions of the Bill. The Bill as revised by the Select Committee was very different from the Bill as referred to it and was even more drastic and sweeping in its amendment of the existing Act.¹

When the Bill as amended by the Select Committee was submitted to the Government and passed, it was found that the Madras Government could not agree entirely with all its provisions; and His Excellency the Governor accordingly returned the Bill in 1925 to the succeeding council for reconsideration, under S. 81-A of the Government of India Act, with reference to certain parts of the Bill. His Excellency, in the course of his message to the Council returning the Bill, said:—

"His Excellency has been advised that the conferment on the Madras City Civil Court of jurisdiction, in matters which the High Court, in the exercise of its ordinary original civil jurisdiction, is competent to take cognizance of, amounts to affecting the jurisdiction of the High Court. It is not permissible in an Act of the Local Legislature to include any provision having this effect. His Excellency therefore suggests the exclusion from the Bill of the territory subject to the ordinary original civil jurisdiction of the High Court.

The Board set up under the Bill being a corporate body of considerable authority, it is essential that judicial proceedings outside Madras City should not start in any court lower than the District Court.

His Excellency considers that it should be placed beyond any doubt that the powers (1) of general superintendence conferred on the Board under clause 14 and on the Committee under clause 31, and (2) of fixing and altering *Dittams* under clause 51 should be subject to the provisions of any scheme framed or deemed to have been framed under the Act.

As it has been contended that the exercise of the powers conferred by clause 51 might in some cases affect indirectly rights and customs to which communities attach great importance, it is desirable that provision should be inserted that the aggrieved trustee or person having interest should have the alternative to institute a suit for modifying or setting aside an order of the Committee under sub-clause (3) of clause 51.

⁽¹⁾ Extract from the minute of Dissent by L. A. Govindaraghava lyer, dated 25th February, 1923.

It is in His Excellency's opinion desirable that the procedure for the settlement, alteration and cancellation of schemes of administration should be substantially the same both for non-excepted temples and for excepted temples and maths. The Board may initially settle the scheme in both cases, but there should in all cases be provision for a regular suit in the Civil Court to set aside or modify a scheme settled by the Board. Further, there should be no restriction or doubt as to the right of appeal to higher courts against decrees in such suits.

In view of the fears expressed as to the possible abuse of the powers under clause 63 for authorizing the application of endowment funds in accordance with what is known as the *cypres* doctrine it is desirable that the procedure for settling schemes of administration should be followed in this case also, that the persons interested should be entitled to institute a suit for modifying or setting aside the orders passed by the Board and that their rights of appealing against the decrees in such suits should be unrestricted."

The Bill as amended in the light of the message of the Governor above referred to was introduced into the next council and passed into law as Act I of 1925.

Before it was finally passed it was reserved for the assent of the Governor-General, and in giving his assent the Viceroy made certain observations which may most carefully be noticed here.

The following is the statement showing the reasons which moved His Excellency the Governor-General in exercise of the powers, conferred upon him by section 81 (3) of the Government of India Act to assent to the Madras Hindu Religious Endowments Act¹:—

Viceroy's statement in giving assent to the Bill.

Act. the majority of which prayed His Excellency to withhold his assent and, in view of the difficulty of sending individual replies to the various memorialists, His Excellency considers that it is desirable that he should make a public announcement of the reasons why he has now assented to the Act.

"The large number of memorials received and the variety of arguments advanced therein, and by the deputations which waited upon His Excellency in support of the contention that the Madras Hindu Religious Endowments Act should not become law, have

⁽¹⁾ Government of India Gazette, Part I, page 1, dated 3-2-1925.

necessitated an anxious and careful consideration of the measure. In the first place, it has been urged that informalities occurred in the passage of the Bill through the Provincial Legislature. It has been rightly pointed out that during the passage of the original Bill amendments were introduced which required the previous sanction of the Governor-General under section 80-A (3) of the Government of India Act, and that such sanction was not obtained. The proviso to that sub-section, however, enables the defect to be cured by the giving of assent. The amendments in question were not such as would have justified the refusal of sanction, and there is, therefore, no reason why the defect should not be cured by assent. In this respect the Bill was in no way exceptional. In the earlier days of the Reformed Constitution the new law of sanction laid down in the Government of India Act was not well-known and was sometimes ignored. But in no case has the Governor-General found it necessary on this ground to withhold his assent from an Act passed by a local Legislature and assented to by the Governor.

"It is contended that, inasmuch as a dissolution of the Council took place after the Bill was first passed in April 1923, there was no power under section 81-A of the Act to return the Bill for reconsideration by the new Counc'l, and that, in any case, in the circumstances the whole Bill should have been thrown open to consideration. It has been suggested that discussion in the Council was hampered by the terms of the Governor's message in which he brought to the notice of the Council the amendments recommended by him and by the President's rulings as to the scope and admissibility of the amendments at the last stage of the discussions on the Bill. The Governor-General, after careful consideration of these arguments, is satisfied that in themselves they afford no ground for withholding his assent. His Excellency has arrived at the same conclusion in regard to the assertion that the reservation of Bills rules required that the Governor instead of assenting to the Bill, should have reserved it for the consideration of the Governor-The rules referred to vest a discretion in the Governor as to whether a particular Bill is of such a nature as to require that it should be reserved.

"On the merits of the Bill, the objections raised by the memorialists and by the deputations have been numerous and varied. It is unnecessary to deal with these in detail. It must be recognised that no measure is free from imperfections or will satisfy all the sections of the community which it concerns. An Act must contain provisions vitally objectionable in principle before the Governor-General could consider himself justified in exercising his veto for the purpose of preventing the measure from becoming law.

His Excellency has given most careful attention to the representations which have been made to him in regard to the provisions of the Act. He cannot shut his eyes to the fact that there is a large amount of dissatisfaction and apprehension in regard to some portions of the Act and he himself has doubts as to the suitability of some of its provisions. In particular, he is unable to regard as satisfactory the procedure laid down for the modification of schemes already settled or deemed to have been settled under the Act. The measure, however, is one which was passed by a majority of the Local Council of the presidency, which included, in fact, a majority of the members of the community primarily affected. It was not to be expected that a measure of this importance would be enacted in the first instance in an unimpeachable form, and there would be no reflection on the action either of the Minister who was responsible for the measure or of the Council, which passed it, if an amending Bill were to be introduced at an early date to remedy the defects which have been made apparent as the result of the exceptionally close examination which the measure has been subjected to. His Excellency, therefore, being satisfied that the measure as a whole is a fair piece of legislation and that there is an adequate remedy available in the local legislature whether on the motion of the local Government or of a non-official member of the Legislative Council, for the removal of defects in respect of which there is substantial agreement, has decided to signify his assent to the Madras Hindu Religious Endowments Act. "1

Thus, the Act was placed on the Indian Statute Book, and was Passing of Act I of immediately put into force. Commissioners were appointed, rules were framed, and taxes levied under the Act from the institutions concerned. But within a few months after the passing of the Act doubts were thrown on the validity of the enactment; and the question of the competency of the Governor to remit a Bill to a council other than the one that

Validity of Act I of 1925 disputed, and the question raised before the Law Courts. passed it, and the validity of an Act passed by such council on such remittal was directly raised in the Madras High Court in several suits that were instituted in the said courts by certain leading mattathipathis and managers

of temples.

Legal opinion was taken; and some of the greatest lawyers expressed great doubts about the validity of the Subject adverse to Government.

Legal opinion on the subject adverse to Government.

The subject adverse to that pronounced the Act to be invalid was Dr. Sapru of the Allahabad High Court.

⁽¹⁾ Governor's message in remitting the Bill to the Council.

While those suits were still pending before the Madras High
Circumstances that
led up to the introduction of a new re-enacting Bill in 1926 with
a provision for valida-

subject seemed to have thought that the constitutional issue raised in those suits was not

altogether free from doubt; and in order to avoid the risk of taking an adverse decision, and also actuated by a desire to avoid the long delay and the great expense to all parties concerned in allowing these suits to be fought out in courts, and also seeing that the objection raised to the Act was purely a technical one relating to Procedure, the Government of Madras applied to the Central Government for permission to introduce a Bill validating the provisions of Madras Act I of 1925.

The Government of India evidently took the view that a validating enactment as such can be passed only by the Imperial Parliament, that the local Legislative Council, as now constituted, cannot validate a statute, purporting to have been passed by the Local Council, whereas a re-enacting bill is in the nature of an introduction of a new measure, into the new Council and therefore, is within the ambit of the powers of the local Legislative Council.

A Bill repealing Madras Act I of 1925 and re-enacting its Passing of Act of provisions in another Code with a clause validating all acts done under the Act of 1925 was introduced into the Council in 1926 and was passed into Law and placed in the Indian Statute Book as the Madras Religious Endowments Act of 1927.

That this Act is a highly beneficial and a long-felt piece of legislation has been recognized by all classes Beneficial nature of of people. That the endowments long stood the Act as a whole. in need of statutory provision for their protection and proper management was the unanimous opinion of the best and most competent persons who have bestowed careful thought But it should also be noted that it is equally on the question. admitted by all parties that the Act as passed is not perfect, and that important amendments had to be introduced without any delay, if the Government wanted to have that amount of spontaneous and willing support from the people, which it was absolutely necessary to secure for the success of a measure of this kind.

⁽¹⁾ See the statement made by the Viceroy in giving his assent to the Act of 1925.

Several amendments were proposed, and very valuable suggestions were made during the progress of General recognition the Bill in 1924 in the Council, especially by of necessity for amend-Mr. Ramachandra Rao and Mr. Govinda-Similarly, very many good suggestions were to be formed in the speeches of members on the opposition Bench during the debate in the Council in 1926, prior to the passing of the present Act. But, the Government was so very confident in the strength of its supporters and followers on both the occasions, that practically none of these amendments were carried in the Council, and in many cases, it may also be stated, without the Government making any attempt to examine the suggestions of the opposition The results of the election that immediately on the merits. followed the passing of the Bill in the Council, showed to some extent, that the ministry which passed the Bill did not entirely represent the opinions and sentiments of the vast mass of the population and the feelings of the general body of the electorate.

The Religious Endowments Board that was constituted under the Act of 1925 also forwarded several valuable suggestions which they found necessary, in practice, for the proper and beneficial working of the Act.

The Government, from the commencement, contemplated the introduction of measures that would take away from the Act some of its more objectionable features, and give effect to all reasonable criticisms that have been made in respect of several of its provisions. In 1928 and 1929 a special committee was appointed for the purpose of suggesting improvements. As the result of their report, Act IV of 1930 was passed making several amendments. These and other subsequent amendments are noticed in their proper places in the body of the book.

Amending Acts.—This Act has, since its enactment in 1927, been amended by not less than ten Acts of the Legislature, (viz.) Madras Acts I of 1928. V of 1929, IV of 1930, XI of 1931, XI of 1934, XII of 1935, XX of 1938, XXII of 1939, V of 1944 and X of 1946.

Madras Act I of 1928.—This Act was passed to get over some of the difficulties experienced in the election of new committees constituted under the Act. Under this Act power was given to appoint members of the committees for a further period of two years. Sch. III, Rule (1) was also amended so as to extend the term of office of members of old committees (Tanjore, Negapatam and Madura Temples) which had not been reconstituted under the Act.

Madras Act V of 1929—Statement of Objects and Reasons.— The system of dedicating young girls to Hindu Temples might probably have originated with the noblest and highest of motives. But now seeing that it has degenerated into something highly objectionable and that the majority of these girls take to a life of impurity it is necessary that the sanction of our temple authorities to such a practice of dedication which breeds immorality, promiscuity and irresponsibility in both men and women, be done away with in the interest of the individual and the nation at large; and thus the public be disabused of the notion that our religion encourages immorality in either man or woman and that the service of these women in any way form an essential part of the worship in temples. It may here be stated that the progressive and enlightened state of Mysore has abolished the practice of dedication of girls to temples as early as 1909.

Madras Act IV of 1930—Statement of Objects and Reasons:—
Religious institutions which do not ordinarily come under the scope of the Madras Hindu Religious Endowments Act on account of their income being below the minimum laid down in section 4 are in a very neglected and mismanaged condition. As it is, such cases have to be dealt with by special application of the Act under the proviso to that section. The Act should apply to all institutions irrespective of income. Wherever the levy of contributions will work as a hardship on temples or maths with low incomes, exemption from S. 69 of the Act may be given, or the Board may fix a suitable rate in exercise of its discretionary power under that section. (See also Notes on Clauses, Fort St. George Gazette, dated 1st October 1929, pp. 193-194).

Madras Act XI of 1931—Extracts from the Report of the Select Committee:—This Bill seeks to carry out two important Amendments in the Madras Hindu Religious Endowments Act II of 1927. The first amendment empowers the Local Government to authorize the Board and its President, subject to such restrictions and modifications prescribed by them to carry on the functions of a committee and its President respectively in cases where there is no committee or an existing committee is not functioning, or ceases to exist. The second amendment authorizes the Collector to recover the arrears of contribution due to the Board or the temple committees as arrears of land revenue.

Madras Act XI of 1934—Statement of Objects and Reasons:—
"The object of this Bill is to carry out an amendment relating to

devadayam and service Inams.

As a result of alienations or encumbrances of Service Inams attached to religious institutions effected by the Inamdars, the inams are in the possession and enjoyment of outsiders who do not perform any service and are therefore lost to the institutions. Such alienations are still being frequently made. Apart from alienations,

CC-0. Jangamwadi Math Collection. Digitized by eGangotri

quite often, inamdars commit default in the performance of the service for which the grant was made. In accordance with the present policy adopted by the Revenue Department the inams are resumed and, on the presumption that the assessment alone constitutes the inam, pattas are granted to the alienees and the assessment is paid to the deity or credited to the general revenues of the Government. The interests of the religious institutions thus suffer and it is, therefore, necessary that they should be protected in the manner proposed (See S. 44-B). This will put an end to alienations of inams."

Madras Act XII of 1935—Statement of Objects and Reasons: Clauses 3 and 8.—In respect of some of the more important temples experience has shown that the existing provisions of the Act relating to framing of schemes are not adequate to ensure the smooth and efficient administration of the affairs or to the best interests thereof. Schemes settled by the courts for most of the temples are found in actual working to be defective. If suits are to be filed for the modification of the schemes settled by courts considerable delay will be caused and the trusts will be involved in protracted litigation and heavy expenditure. It is, therefore, necessary to amend the law suitably to provide for effective steps being taken by the Board for placing the management of important temples on a satisfactory footing. Hence the present proposal in the Amending Bill to give power to Government in suitable cases to notify certain temples and place them under the special management of a salaried Executive Officer.

Clause 4.—Owing to the financial condition of the Board and the committee they are not able to meet the cost of auditing the accounts of religious institutions, and so no audit is being made. As it is highly necessary for a systematic audit of the accounts in question being made, the Act has to be amended so as to recover the audit charges from the funds of the endowments themselves. As regards the cost of audit of the accounts of temple committees, the Act is silent, but the charges are met from their funds. It is proposed

to make the point clear.

Clause 5.—While settling schemes under S. 57, it is often found desirable and necessary in the interests of the temples to fix the numbers of trustees, to remove or appoint new trustees, to associate persons such as honorary visitors in the management, and to restrict the ordinary powers of trustees by the appointment of paid executive officers, and of those of the committee in certain important matters. Though the power to settle schemes includes all these by implication, it is preferable to specifically provide for the same. The proposed explanation is necessary as doubts were raised that the Board has no power to settle schemes in respect of specific endowments.

Clause 6.—In settling schemes under S. 63 for Maths and excepted Temples owing to mismanagement, it is found desirable and necessary to appoint additional trustees or associate others to participate in the management. It is also found necessary in some cases to remove the trustee of excepted temples and to appoint paid officers to look after the secular affairs of Maths and temples under the directions of the trustees. It is preferable specifically to empower the Board as to these matters while settling schemes under S. 63.

Clauses 9 and 10.—Doubts are sometimes raised whether specific endowments also are liable to pay the contribution leviable under S. 69 though the intention is indicated in the second paragraph of sub-section (1) of S. 70. It is proposed to make this clear.

Clause 11.—The power to direct the taking of accounts and making inquiries appearing in S. 92 of the Civil Procedure Code is not now included in the existing S. 73 of this Act. It has been held that a suit for accounting would not lie under the existing provisions of the section. The directing of the taking accounts of a trustee's management in a suit under the section is essential in the interest of the trust, and it is necessary, therefore, specifically to insert the clause in the existing section. The proposed explanation is necessary to remove a possible doubt regarding the applicability of this section to specific endowments.

Madras Act XX of 1938—Statement of Objects and Reasons:—
This amendment is to give effect to the Madras Temple Entry Disabilities Removal Act, 1938. "In the opinion of many trustees, the law of the land and S. 40 of the Madras Religious Endowments Act, II of 1927, in particular, stand in the way of the change sought to be effected by the Temple Entry Disabilities Removal Act. It is, therefore, necessary to enact a law of a permissive character enabling the removal of the bar where local public opinion favours such reform." (See S. 40.)

Madras Act XXII of 1939:—This Amendment is intended to give effect to the Madras Temple Entry Indemnity Act, 1939, in respect of Sri Meenakshi Sundareswarar Temple at Madura and some other Temples in Madura, Tanjore and Tinnevelly Districts.

Madras Act V of 1944.—The following statement of the reasons which have moved His Excellency the Governor to enact the Madras Hindu Religious Endowments (Amendment) Act, 1944, was published for general information:—

"In 1939, when the Congress Ministry was in office, the Minister in charge of Religious Endowments proposed some important amendments to the Madras Hindu Religious Endowments

Act. 1926 (Madras Act II of 1927), with the object of improving the administration of the endowments in this Province. giving effect to the Minister's intentions was prepared but before it could be considered the Ministry demitted office and as the subject was a controversial one, it was considered that it should be left over to be dealt with by a future Ministry. In 1941 the President of the Hindu Religious Endowments Board represented to the Government that there were certain non-controversial points. none of which raised any fundamental issue, in respect of which amendment of the Act was urgently necessary. In view of this representation, the Government considered the subject afresh and appointed a non-official committee with Diwan Bahadur P. Venkataramana Rao Nayudu Garu, retired High Court Judge, as chairman and five other non-officials including the President of the Endowments Board as members, to consider the whole matter and submit proposals. The committee was specifically enjoined to confine itself to amendments which were non-controversial and did not raise any question of fundamental principle.

The committee submitted a unanimous report. The recommendations made by the committee were carefully examined and the Government decided to amend the main Act to give effect to such of the recommendations of the committee as were considered to be specially urgent. A Bill for the purpose was accordingly drafted and published for criticism. After considering the objections and suggestions received, His Excellency the Governor has enacted the Madras Hindu Religious Endowments (Amendment) Act, 1944.

The amendments made by this Act provide for the following matters:—

(1) The abolition of Temple Committees.

(2) The appointment of Assistant Commissioners to discharge centain duties now performed by Temple Committees.

(3) Raising the contribution payable by all institutions to

a maximum of 3 per cent. of their annual income.

(4) The grant of certain additional powers to the President of the Board to improve its working.

Abolition of Temple Committees.—Temple Committees have never worked well in this Province. Those constituted under Madras Act XX of 1863 were neither popular nor effective and were condemned by a committee which included Sir T. Muthuswami Ayyar and Sir C. Sankaran Nair. After the Madras Hindu Religious Endowments Act was passed in 1925, 32 committees were constituted, but most of them are moribund, and only five committees are now functioning with elected members. Want of funds and existence of factions have impeded their working.

and the committees have frequently used their powers in disregard of the welfare of the institutions in their charge. Funds have often been diverted for purposes which were far from legitimate. The Act had to be amended in 1931 so as to provide for the functions of Temple Committees being discharged by the Board, in areas in which they had ceased to exist. The Committee has unanimously

recommended the abolition of Temple Committees.

Appointment of Assistant Commissioners, -Many administrative difficulties are felt by the Board in doing the work assigned to Temple committees by the main Act. The committee considered that there should be men on the spot in the various districts who could get into direct touch with institutions and exercise effective control over them. They have accordingly recommended that Assistant Commissioners should be appointed to take the place of the Temple Committees. The Act gives effect to this recommendation. The number of Assistant Commissioners will be fixed from time to time by the Government in consultation with the Board. Appointments to the posts will be made by the Government after consulting the President of the Board. The Assistant Commissioner will have practically all the powers now possessed by Temple Committees, including the power of scrutinizing the registers referred to in sections 38 and 39, the dittams referred to in section 55 and the budget referred to in section 56. The Assistant Commissioner will also assist the Board by conducting enquiries and investigations, taking evidence and making inspections on its behalf and under its directions. The Board has also been authorised to delegate any of its powers and duties to Assistant Commissioners, subject to such exceptions and limitations as it may think fit. In regard to the appointment and suspension, removal or dismissal of trustees. the power of Assistant Commissioners will be restricted to nonhereditary trustees of temples which are not included in a list prepared and published by the Board from time to time in the prescribed manner. Disciplinary power in respect of all hereditary trustees of temples and the power to appoint, suspend, remove or dismiss non-hereditary trustees of temples included in the list aforesaid will vest only in the Board. The Board will have power to call for the records of orders and proceedings of Assistant Commissioners and to cancel or modify them when necessary.

Raising the contributions payable by institutions.—No contribution is at present levied from temples whose annual income is below Rs. 200. Over 15,000 out of about 27.000 temples in the Province belong to this category. Out of the remaining 12,000 temples, over 8,000 are non-excepted temples and contribute 3 per cent. of their income to the Board and the remaining institutions contribute only one and a half per cent. The Government agree with the committee that there is no justification for this distinction and

that the contribution should be levied at a uniform rate in all cases. Besides, it is impossible to effect any real improvement in the administration of the endowments without substantially augmenting the Board's finances. The Board has made every possible retrenchment and yet its funds are quite insufficient to meet legitimate and necessary expenditure. The Act therefore provides for the levy of a uniform contribution from all institutions without exception at a rate not exceeding 3 per cent. of their annual income.

Powers of the President .- The intention of the main Act was to confer on the President of the Board the status of its administrative head, but this was not specifically laid down in that Act. The absence of such a provision has led to some disharmony necessitating the intervention of the Government. In order to secure efficiency in administration and uniformity of Policy, the Government consider it desirable that the President of the Board should be made responsible for the proper working of the Board and for the discharge of its functions. The Act therefore makes him the administrative head of the Board and confers on him the power to constitute territorial divisions and to assign such divisions and other functions among the Commissioners. The President is also empowered, for reasons to be recorded in writing, to transfer any pending proceeding from one Commissioner to another or from one committee of the Board to another, and to call for the papers in regard to any administrative matter disposed of by a Commissioner within three months from the date of disposal, and direct a reconsideration of such matter by the full Board or a committee thereof." (Legal Department Notification.)

Act X of 1946. "Statement of Objects and Reasons."—"In 1939, the Minister in charge of religious endowments proposed certain important amendments to the Madras Hindu Religious Endowments Act, 1926, with the object of improving the administration of the endowments in this Province. A Bill giving effect to the Minister's intention was prepared, but before it could be considered, the Ministry went out of office. In 1941, the President of the Hindu Religious Endowments Board represented to the Government that there were some non-controversial points in respect of which amendment of the Act was urgently necessary. The Government appointed a non-official committee, with Sri Diwan Bahadur P. Venkataramana Rao Naidu, Retired High Court Judge. as Chairman and five other persons including the President of the Endowments Board as members, to consider the whole matter. The Committee functioned from July 1942 to March 1943 and submitted a unanimous report. Certain recommendations of the Committee which related to changes considered to be immediately necessary were embodied in the Madras Hindu Religious Endowments

(Amendment) Act. 1944. The remaining recommendations of the Committee were carefully examined in consultation with the High Court, the Board of Revenue and the President of the Hindu Religious Endowments Board and the Government considered it necessary to make certain further amendments to the Act. A Bill for this purpose was published for criticism. After considering the objections and suggestions received, His Excellency the Governor has enacted the Madras Hindu Religious Endowments (Amendment) Act, 1946. The important amendments made by this Act are briefly explained below.

Religious endowments in the Presidency town which have hitherto been outside the scope of the principal Act, have now been

brought within its purview (section 2).

The distinction made in the principal Act between excepted and non-excepted temples has now been removed and necessary consequential changes have been carried out throughout the Act [sections 3 (ii), 7, 8, 11, 19, 21, 29 and 36].

The definition of "religious endowment" has been amplified so as to make it clear that the Hindu Religious Endowments Board has jurisdiction over the property or endowments of defunct temples. The amendment will enable the Board to take steps for the revival of the temples or for the application of the endowments to objects of a like nature [section 3 (v)].

Provision has been made to the effect that a person who acts in a vacancy caused by the grant of leave to the President or Commissioner will hold office as such only during the continuance of the vacancy or for any shorter period fixed by the Government (section 4). The President and the Commissioners of the Board

have been exempted from serving as jurors (section 5).

It has been made clear that an inam granted for the support or maintenance of a math or temple is within the scope of section 44-B

of the principal Act [section 9 (i)].

Provision has been made for a more effective auditing of the accounts of the temples, maths and endowments connected therewith, for the rectification of defects and irregularities disclosed in audit reports and for the recovery from trustees by way of surcharge, of the amount of any loss caused to the endowment by their misconduct or negligence. The rule-making power conferred by section 71 of the principal Act has also been amplified so as to cover the method of recruitment of auditors and their qualifications [sections 10 and 33 (a)].

The powers of the Board have also been enlarged in certain cases. Its decision under sections 54 and 56 of the principal Act will not hereafter be liable to be questioned in a court of law (sections 14 and 15). The Board will also have power to get more information in regard to the budget from trustees of maths and to

CC-0. Jangamwadi Math Collection. Digitized by eGangotri

make suggestions in regard to the various items in the budget (section 20). The Board can also exercise the powers conferred by sections 59 and 60 of the principal Act in respect of maths and endowments connected therewith (section 24). Power has been given to the Board to take proceedings under section 65-A for notifying a temple or specific endowment attached thereto, notwithstanding the fact that the temple or endowment is governed by a scheme previously settled and such notification will not be liable to be questioned in a court of law (section 26). The powers of administration vested in other authorities by schemes already settled by courts have also been transferred to the Board (section The Board will have jurisdiction to decide disputes as to whether or not an institution or endowment is one to which section 77 of the principal Act applies (section 37). The Board will also have jurisdiction to decide disputes in regard to the usages of a math or temple or in regard to the customary rights, honours, etc. claimed by any person in a math or temple (section 39). The Board has also been empowered to decide whether a trustee is a hereditary trustee or not, and if any person is aggrieved by its decision, he may move the court to modify or set aside the decision (section 40).

Provision has also been made for the payment by maths, temples and specific endowments in receipt of an annual income of not less than Rs. 1,000 of a contribution to meet the cost of audit (section 31). It has further been provided that the objections of any of the trustees should be heard before the Board levies the costs, expenses and contributions payable under sections 68 and 69 of the principal Act. The levy of contributions from temples and maths has also been limited to the period of three years immediately preceding the fasli in which a notice of assessment is

issued (section 32).

As has been said, this Act follows in the main the provisions of the corresponding provisions of the Charitable Trusts Acts in England.1

Course of legislation in England regarding administration of charities.

In England, at the present time, by virtue of the provisions of the Charitable Trusts Acts, the administration of charity property and affairs has been, to a very great extent, confided to the Board of Charity Commissioners.

Prior to 1853, the year in which the Act appointing a permanent body of Commissioners was passed. several inquiries had been made at different English Charitable Trusts Acts. periods, by Commissioners appointed under various statutes, into the condition of charities; but they do not

⁽¹⁾ See the Statement of Objects and Reasons to the Robinson Committee Bill cited supra.

seem to have promoted the welfare of charities generally, al-

though perhaps in individual cases it was otherwise.

Subsequent to the Statute of 43 Eliz. c. 4, the first of such inquiries appears to have been made in pursuance of the Act of 26 Geo. III. c. 58, which was passed to "procure on oath returns of all charitable donations for the benefit of poor persons in the several parishes and places within that part of Great Britain called England" from the ministers, church-wardens, and other persons. The result of this enactment appears by the report to have been so far successful as to have procured the furnishing of returns from nearly 13,000 parishes, and to have revealed the fact that many of such charitable donations had been lost, and that others were in danger of the same fate.

In 1812 the Legislature attempted to remedy this by requiring the registration of such charitable gifts (52 Geo. III. 102). This enactment did not, however, extend to donations secured on land, nor did it extend to charitable institutions, royal foundations, nor to certain other institutions unnecessary here to refer to. The objects of the Legislature in passing this measure does not appear to have been successful. In fact, the statute was hardly of a nature sufficient to cope successfully with the then existing abuses

in the administration of charity trusts.

By the Statute of 58 Geo. III. c. 91 (extended or continued by 5 Geo. IV. c. 58, and 10 Geo. IV. c. 57, down to the year 1880), an attempt was made to improve the administration of charities for educational purposes, and Commissioners were appointed to inquire into the amount, nature and management of such This Statute was amended by 59 Geo. III. c. 81, institutions. by which its powers were extended to other charities and at the same time provision was made for increasing the number of Commissioners, to whom additional facilities were given for making application to the Court of Chancery concerning the management of property appropriated to charitable purposes. By a later Act passed in the same year (59 Geo. III. c. 91) such Commissioners were empowered to certify the particulars obtained by virtue of their powers under the above-mentioned statutes, to the Attorney-General who could apply summarily by way of petition or information for relief.

The Commissioners appear to have found their task by no means a light one, and to have been unable to complete their investigations within the period originally allotted to them, for another Commission was issued under the Statute of 1 & 2 Will. IV. c. 34,

to continue such investigations.

These investigations were continued down to 1837 by various statutes (2 Will. IV. c. 57; 5 & 6 Will. IV. c. 71; 7 Will. IV. c. 4), but the result was far from being satisfactory, for, the reports made by such Commissioners show that there existed cases of

gross maladministration of charity property, and more particularly

in connection with charities having special visitors.

In 1849 a Royal Commission was appointed for the purpose of examining the reports made by the Commissioners under such inquiries, and they recommended the appointment of a permanent Board of Commissioners which led to the passing of the Act of 1853 (16 and 17 Vict. c. 137). By the administrative powers given to the Charity Commissioners by this Act, and by other Acts subsequently passed, a resort to the jurisdiction of the High Court to administer a charity trust has, to a very great extent become unnecessary, and in many cases difficult, greatly to the advantage of charities in general. These administrative powers have been extended from time to time by the Charitable Trusts Acts of 1855, 1860, 1862, 1887, 1891 and 1894 which by the Short Titles Act (59 & 60 Vict. 1896 c. 14) are now grouped under the collective title of the "Charitable Trusts Acts, 1853 to 1894", and the result has been that charities generally have greatly benefited by the extensive powers given to the Charity Commissioners by these Acts inasmuch as a check has been imposed on the enormous abuses which had grown up, in the administration of charities, and more particularly in reference to proceedings which used to be instituted for the good of no one but parties interested in the costs of such proceedings.1

English Law relating to Charity Commissioners.—The powers exercised by the Charity Commissioners in relation to charities are derived mainly from the Charitable Trusts Acts, 1853 to 1925. The object of these Acts is, shortly, to protect property belonging to charities against loss, and to provide a simple and economical way of carrying out the charitable intentions of founders where such intentions are inadequately expressed in the instruments of foundation.

The Commissioners have inquisitorial, administrative and judi-

cial powers.

The Charitable Trusts Acts are so construed by the Courts as to further rather than to restrict the jurisdiction vessed by them in the Commissioners.

The Commissioners are concerned with all dealings with capital of charities, as well as all variations of the prescribed mode

of giving effect to the objects of a charity.

They are in no sense administrators of income, which must be dealt with by the trustees within the limits prescribed by the founder or according to duly authorised variations. (See Halsbury, Laws of England, 2nd Ed., Vol. IV, p. 355).

⁽¹⁾ See Chilcott's Administration of Charities in England (1898). pp. 1-4.

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THE MADRAS Hindu Religious Endowments Act (ACT OF 1927).

[RECEIVED THE GOVERNOR-GENERAL'S ASSENT ON 19-1-27.]

An Act to provide for the better administration and governance of certain Hindu religious endowments and to remove certain doubts as to the legality of the action taken and things done under the Madras Hindu Religious Endowments Act, 1923.

Whereas it is expedient to provide for the better administration and governance of certain Hindu religious endowments described hereunder;

AND WHEREAS diverse doubts have been raised as to the validity of the action taken and things done under the Madras Hindu Religious Endowments Act, 1923;¹

AND WHEREAS certain legal proceedings have been commenced in the High Court of Judicature, Madras and certain courts subordinate thereto, questioning the said action and things;

AND WHEREAS it is expedient to remove those doubts and to validate the said action and things;

AND WHEREAS the previous sanction of the Governor-General has been obtained to the passing of this Act;

It is hereby enacted as follows:-

Preamble. —Act XX of 1863 was so badly framed and the amendments required therein were so many that it was considered the preferable course to repeal it altogether and enact a self-contained piece of legislation dealing with the whole subject of Hindu religious endowments in this Presidency.²

⁽¹⁾ Madras Act I of 1925.

⁽²⁾ See Statement of Objects and Reasons.

Act I of 1925 was accordingly passed. As doubts were raised as to the validity of that Act, this Act is passed repealing Act I of 1925, and re-enacting its provisions over again with a clause validating action taken and things done under the Act of 1925.

Endowment.—"By an endowment is meant all property of every description belonging to or held in trust for a charity or charitable purpose, and whether held for its general purposes or any special purpose, and whether upon trusts or conditions which render it lawful to apply the capital to the maintenance of the charity or upon trusts which confine the charitable application to the income."

Hindu Religious Endowment.—The term "Hindu" includes all who are called Hindus in common parlance. "It is not within the province of Civil Courts to determine questions of orthodoxy. In order to determine whether a certain person is a Hindu, it is immaterial whether he is recognised as a Hindu by the orthodox caste Hindus, the only question being whether he himself adheres to some form of Brahminical worship and belief. Caste regulations do not constitute Hinduism, though they flourish among Hindus".

Thus sectarians like Jains, Brahmos, Arya Samajists, Sikhs and Bairaghees are also Hindus.4

Change of the mode of worship and customs about dress and diet do not make them non-Hindus, and by becoming a Brahmo one does not necessarily cease to be governed by the Hindu Law.⁵

"Hinduism includes a fluctuating mass of beliefs, opinions, usages and observances, social and religious ideas, the exact details of which it is impossible to reduce to anything like order, and in the most diverse aspects of which it is impossible to recognise anything that is common. A belief in the religious superiority of Brahmins, veneration for the cow, and respect for the distribution of castes are the elements of Hinduism, which are most generally recognized as fundamental. But each and all of these has been rejected or is

⁽¹⁾ For the history of this enactment, see Introduction supra.
(2) Re Clergy Orphan Corporation (1894) 3 Ch. 145 (151) C.A.
Hals. 2nd Ed. Vol. IV, p. 357.

⁽³⁾ Maung Chit v. Ma Yait, 37 I.C. 780; 10 Bur.L.T. 194. See also 3 L.B.R. 228; 4 All. 343; 30 I.A. 249; 31 Cal. 11: 7 C.W.N. 895; 5 Bom.L.R. 845; 8 Sar.P.C.J. 543; 13 M.L.J. 381; 9 M.I.A. 195.

(4) Sheo Zag v. Dakho, 5 I.A. 108; Kalgavda v. Somappa, 32 Bom.

⁽⁴⁾ Sheo Zag v. Dakho, 5 I.A. 108: Kalgavda v. Somappa, 32 Bom.
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Rani Bhagwan Kuar v. Jogendra Chandra Bose, 30 I.A. 249 (Brahmos.)
(5) 30 Ind. App. 249. As to Jain endowments, see S. 2, Expl. and

S. 3, Cl. (2) infra.

(6) See on this point Ghose's Hindu Law, Vol. I, 3rd Ed., p. 997; Succession Act (XXXIX of 1925) (M.L.J. Ed.) notes under S. 4, pp. 3-40.

rejected by tribes, castes, or sects whose title to be included amongst Hindus is not denied."

Religious and Charitable Endowments.—The Act is confined to purely Religious Endowments as distinguished from Charitable Endowments. But the distinction between Religious and Charitable Endowments is not found in the Hindu law. "Religious and charitable purposes are coupled in the Hindu authorities, and the example given is a reservoir of water or the like constructed for public good. Under this definition rest-houses for travellers, groves of trees, roads, conduits and schools as well as distribution of alms have in various cases been held to come."

Religious and non-religious endowment.—Sometimes an endowment is made for several purposes some of which are religious and others are not religious. In such cases of mixed endowments it is the primary object of the endowment that determines the real character of the gift. Thus, if the gifts is in the main for a secular chariable purpose the fact that there is a direction that a small portion is to be utilized for a religious purpose will not make the endowment a religious one. 3 Similarly, if the bulk of the property is given to a religious purpose a direction to appropriate a portion to a secular purpose will not make the endowment a secular one. In all such cases if the two portions of the endowments can be severed the courts will treat the religious portion of the endowment as religious and the rest as secular; where, however, the two portions cannot be severed, questions of greater difficulty arise. In all such cases provision is made for the apportionment of the funds for the several purposes mentioned by the donor.4

The question was also considered in a case that recently came before the Madras High Court. One Kanagammal executed a will by which she constituted three properties, one a chattram and

⁽¹⁾ Extract from N.W.P. Census Report, 1891. Cited in Mayne's Hindu Law, 8th Ed., p. 12 and Ganapathi Iyer's Rel. End., 2nd Ed., p. 56.

⁽²⁾ West and Buhler's Hindu Law, 3rd Ed., pp. 206 and 207. Ganapathi Iyer's Religious Endowments, 2nd Ed., pp. 23, 52, 53 and 206. Special provision has been made for administration of Charitable Trusts by the Charitable Endowments Act (VI of 1890) and the Charitable and Religious Trusts Act IV of 1920.

⁽³⁾ On his subject sec Ganapathi Lyer's Rel. End., 2nd Ed., pp. 305 and 306.

⁽⁴⁾ S. 21 of Act XX of 1863 enabled the Board to apportion the endowed property for the different purposes. S. 92, C.P.C., enables the Court also to make such apportionment in scheme suits, See also S. 67, infra.

⁽⁵⁾ Venkatachala v. Taluq Board, 34 Mad. 375: 10 I.C. 301. Trust created for conduct of certain charities viz., feeding of Brahmins, performing of archana to a goddess in a temple and supply of butter-milk to pilgrims attending a certain festival in a temple, is not religious in character. 34 M. 375=10 I.C. 301=21 M.L.J. 305.

two houses as endowments for certain charities, viz., (1) to feed 12 Brahmins on Dwadesi day in the chattram building, (2) to perform archana to the Goddess in a temple, (3) to supply neer moru (butter milk) etc. to persons attending the Molugadi Servai at Tiruvottiyur, and appointed the first defendant and two others as trustees to carry out the charities. For some time, first defendant managed the properties. Subsequently, he mismanaged and was also convicted of an offence. On his alienating the endowments to defendants 2 and 3 the Board of Revenue interfered, and, on enquiry, passed an order vesting the properies in the Taluk Board. Saidapet. On the strength of that order, the Taluk Board sued to recover from defendants 2 and 3 the charity properties in their possession. In the course of the judgment, their Lorddships Sir Ralph Benson and Justice Sundaram Ayyar said:-"The main question argued at the hearing was that raised by the first issue, whether the Revenue Board's order making over the management of the choultry to the plaintiff was legal and valid. Mr. Venkatarama Sastriar contended that the trust must be regarded mainly as a religious one, and that the Board had, therefore, no jurisdiction over it. He argued that the distribution of neer moru, etc... to people attending the festival at Thiruvottiyur should be regarded as a religious charity. We are clearly of opinion that this contention is not correct. The distribution, no doubt, is to be amongst those who attend the festival in the temple, but it is not to be an offering to the deity, and it is not any ceremony which is part of the temple festival itself. The learned vakil did not contend that the small provision for making archana every Friday to the Goddess would make the trust a religious one. We, therefore confirm the finding of the lower court that the trust is not religious in its character",1

Evidence.—To ascertain whether an institution, like a Mutt, is a public religious endowment falling within the purview of this Act entries in the registers kept by the institution can be referred to and relied on. 48 L.W. 735=1938 Mad. 810=(1938) 2 M. L.J. 85.

Previous sanction of the Governor-General .- The previous sanction of the Governor-General is required for the enactment of this Act, because under section 79, cl. (2) of the Government of India Act, 1915, it is enacted that "the local legislature of any province . may, with the previous sanction of the Governor-General (only), but not otherwise, repeal or alter as to that province any law made either before or after the commencement of this Act by any authority in British India other than that local legislature" and as this Act seeks to repeal Act XX of 1863 and Regulation VII of 1817,

⁽¹⁾ Vencatachala v. Taluq Board; 34 Mad. 375: 10 I.O. 301.

the previous sanction of the Governor-General has been sought for and obtained.1

This Act does not take away jurisdiction of Court under the Charitable and Religious Trusts Act, 1920.—The Madras Hindu Religious Endowments Act has not taken away the jurisdiction of the District Judge under S. 5 of the Charitable and Religious Trusts Act. To a certain extent both the Acts cover the same ground. When the District Judge passes an order under S. 5 of Act XIV of 1920, because the Madras Hindu Religious Endowment Board showed no inclination to exercise its powers under the Madras Act, it is a good reason for exercising his discretion; and the order cannot be revised by the High Court under S. 115, C. P. Code. 152 I.C. 1052—40 L.W. 920—A.I.R. 1935 M. 56 (1)—68 M.L.J. 55.

Pending suits.—Even after the passing of this Act, worshippers who had instituted suits before the passing of the Act can continue them. There is nothing in the Act which could take away the right of persons who were parties to pending actions at the time of the passing of the Act. 108 I.C. 793: A.I.R. 1928 Mad. 905.

Act, if retrospective.—See A.I.R. 1926 Mad. 162. Act has no retrospective effect. 115 I.C. 54: A.I.R. 1929 Mad. 322 (case under S. 75).

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called THE MADRAS HINDU RELIGIOUS ENDOWMENTS. Act, 1926.

Commencement of the Act.—There is no special provision in this Act as to the date of its commencement. But under S. 5 of the General Clauses Act (X of 1897) and S. 5 of the Madras General Clauses (Act I of 1891) where no time is mentioned or provision made for its commencement, "it shall come into force upon the first publication, made in pursuance of section 40 of the Indian Councils Act, 1861, by the Governor of Fort St. George of the assent thereto of the Governor-General of India; and in every such Act the date of such first publication shall be printed either above or below the title of the Act, and shall form part of

⁽¹⁾ See Government of India Act, S. 79.

every such Act."1 This Act came into force on the 8th Feb., 1927.

Construction of the Act.—In construing the provisions of the corresponding English Charitable Trusts Acts, with regard to the jurisdiction of the Commissioners, it has been held2 that in cases where it is possible to place two or more constructions on the meaning of the Acts, the Court adopts that construction which supports the jurisdiction of the Commissioners, since it should be borne in mind that such a body of Public Commissioners, acting under statutory powers, would most likely have exercised care not to overstep the limits of their authority.3 In all cases, therefore, when a reasonable doubt exists as to the jurisdiction, the Court leans in favour of such jurisdiction vesting in the Commissioners.4

Jurisdiction.—The jurisdiction would extend to all charities founded and endowed within the Presidency notwithstanding their revenues are applied abroad5 and to all charities the endowments of which are abroad but the proceeds of which are applicable within the Presidency. So, too, the jurisdiction of the Commissioners extends to charities whose endowments are not perpetual, or which may be diverted to purposes which are not charitable.7

However, the jurisdiction of the Commissioners when invoked is a continuing jurisdiction, so that when an application has once been made pursuant to the Act, that jurisdiction attaches absolutely to the charity and cannot be stopped or put an end to by a withdrawal of such application before an order has been made and sealed.8

2. This Act extends to the whole of the Presidency of Madras 9[* * *] and applies, save as Extent. hereinafter provided, to all Hindu public religious endowments.

⁽¹⁾ See Madras General Clauses Act I of 1891, S. 5.

⁽²⁾ Under the English Charitable Truss Acts (1853-1894).

⁽³⁾ Attorney-General v. Wygeston Hospital, 82 L.T. 377. (4) Chilcott Administration of Charities (1898) pp. 5-7. (5) In rc Duncan, L.R. 2 Ch. 356.

⁽⁶⁾ Ironmonger Co. v. Attorney-General, 11 Cl. F. 98. This is on the analogy of the construction placed on the corresponding provisions of the English enactments.

⁽⁷⁾ Re Sir R. Peel's School at Tamworth, L.R. 3 Ch. 345; In re Gilchrist's Trusts, 64 L.J.Ch. 298.

⁽⁸⁾ In re Poor Lands Charity, Bethnal v. Green, L.R. (1891) 3 Ch. 400.

⁽⁹⁾ The words "Except the Presidency Town" ommitted by Madras Act X of 1946.

Explanation.—For the purposes of this Act, Hindu public religious endowments do not include Jain religious endowments.

Act extends to the whole of the Presidency of Madras .- The Presidency town of Madras is not now excluded from the operation of this Act.

"Presidency of Madras" shall mean the territories within British India for the time being under the administration of the Governor of Fort St. George in Council.1

Public Religious Endowments.—The Act applies only to public . and not to private religious endowments.

Distinction between public and private endowments .- Religious endowments are either public or private. In a public endowments the dedication is for the use or benefit of the public. When property is set apart for the worship of a family god in which the public are not interested, the endowment is a private one.2

This section presupposes the existence of a public trust or endowment.-Private trusts and endowments concern only individuals or families for private convenience or support. By public trusts may be understood such as are constituted for the benefit either of the public at large, or of some considerable portion of it answering a particular description. In private trusts the beneficial interest is vested absolutely in one or more individuals, who are, or within a certain time may be, definitely ascertained and to whom therefore collectively, unless under some legal disability, it is or within the allowed time will be, competent to control, modify or determine the trust. A public or charitable trust, on the other hand, has for its objects the members of an uncertain and fluctuating body, and the trust itself is of a permanent character.3

The distinction between public and private endowments is important, for it has been held by the Judicial Committee that, where the temple is a public temple, the dedication may be such that the family itself could not put an end to it, but in the case of property dedicated to a family idol, the consensus of the whole family might give the property another direction.4

It has accordingly been held that where the heirs of the founder are unable to carry on the worship of the family idol out of the income of the endowments they may transfer the idol and its property to another family for the purpose of carrying on the worship. Such a transfer, if made without consideration

(3) Ibid., Lewin, p. 18.

⁽¹⁾ Mad. General Clauses Act (I of 1891), S. 3 (24).
(2) Jugalkishore v. Lakshmandas, 23 Bom. 659.

⁽⁴⁾ Komwar Doorganath v. Ram Chunder, 2 Cal. 341 (347); 4 I.A. .52 (58).

and for the benefit of the idol, is valid and binding on the heirs of the transferors. In other respects, however, there is no distinction between the two kinds of endowments. Thus property dedicated to the services of a family idol cannot be alienated except for unavoidable necessity, nor can it be taken in execution of a personal decree against the shebait.2

Religious Endowments Act XX of 1863.—The Religious Endowments Act, 1863, also did not apply to private endowments.3

Maths.-Though maths as a rule are pubic endowments, a math may be a private institution.4

Jain Temples and Endowments:-Explanation.-S. 2 Explanation would have to be read along with the S. 3, Cl. (b) which gives power to the Local Government to extend the provisions of this Act to Jain temples also.

- 3. (a) The [Provincial Government] may, after consulting the Board, exempt any such endow-Power to exempt ment from the operation of all or any of endowments. the provisions of this Act or vary, alter or cancel such exemption.
- (b) The [Provincial Government] may, by notification, extend to Jain religious endowments the Power to extend Act provisions of this Act and of any rules to Jain endowmentr. framed thereunder, and may declare such extension to be subject to such restrictions and modifications as they think fit:

Provided that before issuing such notification the [Provincial Government] shall publish in the [Official Gazette] a notice of their intention to do so, fix a reasonable period for the persons interested in the endowments concerned to show cause against the issue of such notification and consider their objections, if any.

Jain maths and Jain Religious Institutions.—There are shrines in this Presidency to which endowments of considerable value are attached. As the Jains in these matters do not mate-

Khetter Chunder v. Hari Das, 17 Cal. 557.
 Rupa v. Krishnaji, 9 Bom. 169.
 Protap Chandra v. Brojonath, 19 Cal. 275.
 Sathappayyar v. Periasami, 14 Mad. 1.

⁽⁵⁾ See Notes under S. 3 infra.

rially differ from the Hindus it is proposed to take power to extend the Act by notification to such endowments.1

Temples in Malabar.-Temples in Malabar and Canara are not excluded from the operation of this Act. But such temples have

always occupied a peculiar position.

No doubt Madras Regulation VII of 1817 applied to Malabar, but there was no Government interference in any way with the management of public temples in those districts during the period between 1817 to 1842, when Government managed religious institutions in other districts through their own agency. Similarly, no committees were established in Malabar under Act XX of The reason for this non-interference may be found in the fact that many of the temples are claimed by the Rajahs, Uralars, Jenmis and other landlords to be private temples, and in cases where such claims are valid, these temples would even under this Act be exempted from the operation of this Act. But where no such claim can be established the provisions of the Act would apply.2

Referring to the temples in Malabar, the Commissioners in their first Report said .- "The district of Malabar was left out of the scheme of Committees constituted under Act XX of 1863 and the trustees of even public temples in Malabar were left to manage without any supervision or control for such a long time that most of them began to claim the temples as private institutions. Owing to the disputes about the character of the temples in Malabar and the fact that most of these temples come under "excepted temples", the question of constituting temple committees for Malabar has not been considered so far."

The Madras Hindu Religious En-6. Repeal of Madras dowments Act, 1923 (hereinafter referred Act I of 1925. to as 'the said Act) is hereby repealed.

Doubts were expressed as to the validity of the Madras Hindu Religious Endowments Act, 1923, and of the action taken and things done in pursuance of and under that Act and legal proceedings were instituted in the Madras High Court and certain

(1) See Statement of Objects and Reasons.

(3) Fifth Rep. of the Rel. End. Board, pp. 28-29.

⁽²⁾ See Proceedings in Council, G.O. No. 72, Legislative, dated 26th May, 1894. See also 9 Mad. 473; 3 Mad. 401. See also 1938 Mad. 209; (1937) 2 M.L.J. 485.

⁽⁴⁾ Omitted by S. 3, Madras Act IV of 1930.(5) Omitted by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

subordinate courts questioning its validity. The result was that the working of the Act had been considerably obstructed by persons whose supposed vested interests had been affected by the Act. This Act is primarily intended to remove all doubts that may exist as to the validity of the said Act and of action taken and things done thereunder. As the present Act is intended to take the place of the Act of 1923, that Act is no longer necessary, and so is repealed.

Validation of action taken and all things done including the constitution of the Board of Commissioners for the Hindu Religious Endowments, the notifications issued and orders made under and in pursuance of the said Act shall be deemed to have been validly taken, done, issued or

made.

(ii) All proceedings taken under the said Act may be continued under this Act in so far as they are not inconsistent with the provisions of this Act.

(iii) Any remedy by way of application, suit or appeal which is provided by this Act shall be available in respect of proceedings under the said Act pending at the time of the commencement of this Act as if the proceedings in respect of which the remedy is sought had been instituted under this Act.

When the Government of Madras approached the Government of India originally for permission to introduce a Bill validating Madras Act I of 1925, the Government of India was of opinion that a validating enactment as such can be passed only by the Imperial Parliament, that the local Legislative Council, as now constituted, cannot validate a statute, purporting to have been passed by the local Council, whereas a re-enacting bill is in the nature of an introduction of a new measure into the new Council and, therefore, is within the ambit of the powers of the local Legislative Council. Referring to this view and the provisions of this section a competent writer in the course of an article contributed to the Madras Law Journal, said:—"The distinction between a re-enacting and a validating bill is, in the circumstance of this particular case, one of form rather than of substance. This re-enacting bill contains a provision validating all the Acts of the Endowment Board, and the whole machinery constituted under the prior Act. If the provision so inserted into the new bill is not to be termed a validating provision, it can only be viewed as a provision giving a retrospective effect of a novel character

to a bill which is to be introduced afresh and for the first time. Thus it will be seen that the objections of the Government of India to a validating bill as such are equally applicable to a re-enacting bill with a validating provision."

Analogous Law.—S. 24 of the General Clauses Act (X of 1897) enacts that,—"Where any Act of the Governor-General in Council or Regulation is, after the commencement of this Act, repealed and re-enacted with or without modifications, then, unless it is otherwise expressly provided, any appointment, notification, order, scheme, rule, form or by-law, made or issued under the repealed Act or Regulation shall, so far as it is not inconsistent with the provisions re-enacted, continue in force, and be deemed to have been issued under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, rule, form or by-law made or issued under the provisions so re-enacted."

Proceeding under Act of 1925—Continuation.—The only provision in Act II of 1917 about continuation of proceedings begun under the Act of 1925 is S. 7 (2). It says that all proceedings taken under the earlier Act may be continued after that Act in so far as they are not inconsistent with the provisions of this Act. There is nothing in S. 75 (4) which is inconsistent with continuing the application presented already. In such cases it is not necessary to convert the applications into suits nor is there any question of Court-fees. 140 I.C. 769—1932 M.W.N. 1120—36 L.W. 883—63 M.L.J. 780. After the passing of Act II of 1927 worshippers who had instituted suits before the passing of the Act can continue them. There is nothing in the Act which could take away rights of persons who were parties to pending suits. 108 I.C. 793—1928 M. 905.

Section not ultra vires of the powers of the Madras Legislature. Where an Act of a subordinate Legislature is invalid owing to the non-compliance of certain conditions required by an Act of Parliament which constituted the Subordinate Legislature, the passing of a fresh enactment by the subordinate Legislature which complies with the requirements of the Imperial Act and which is validly passed and which validates acts done under the provisions of the Act is not ultra vires of its powers. 28 L.W. 535—A.I.R. 1928 Mad. 1272—55 M.L.J. 605 (1906 A.C. 360; 1929 A.C. 230, Ref.). See also 116 I.C. 561.

^{(1) 51} M.L.J. 37 (Journal). The provisions of this section led to a heated debate in the Council. The speech of the Advocate-General in support of the validity of this provision may also be read with advantage.

Repeal of enactments.

Religious Endowments Act XX of 1863.—The Religious Endowments Act (XX of 1863) was to badly framed, and the amendments required therein were so many that it was considered the preferable course to repeal it altogether and enact a self-contained piece of legislation dealing with the whole subject of Hindu religious endowments.¹

Madras Endowments and Escheats Regulation VII of 1817.—
This Regulation was already repealed so far as religious endowments were concerned by S. 2 of Act XX of 1863. The repeal of Act XX of 1863 would not in any way revive the Regulation once repealed.² It is not necessary to repeal the Regulation by this Act. It should be assumed that it is as a matter of greater caution that a specific provision is made herein for the repeal of the Regulation VII of 1817 also.

Effect of repeal.—It shall be noted that the repeal "does not affect anything done, penalty incurred, or any proceedings begun before the commencement of the repealing Act; or revive anything not in force or existing at the time at which the repeal takes effect; or affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed."

Definitions.

9. In this Act, unless there is anything repugnant in the subject or context—

(1) 'Board' means the Board as

constituted under section 10.

Committee.

Board.

[(2) 'Committee' means a committee as constituted under section 20.] (Omitted by Act V of 1944.)

[(3) 'Court' means—

- (i) the High Court, if the math or temple is situated within the Presidency town; and
- (ii) the court of the District Judge, if the math or temple is situated in a district.

(1) See Statement of Objects and Reasons.

(2) See Madras General Clauses Act (I of 1891), Ss. 8 and 9.

Explanation.—'Court' in relation to a specific endowment means the High Court or the Court of hte District Judge according as the math or temple to which the specific endowment is attached is situated in the Presidency town or in a district.

If a specific endowment is attached to more than one math or temple, 'Court' in relation to such specific endowment means—

- (i) the High Court or any one of the courts of the District Judges concerned, if the maths or temples are situated both in the Presidency town and in one or more districts;
- (ii) any one of the courts of the District Judges concerned, if the maths or temples are situated in more than one district".] (Substituted by Madras Act X of 1946).
 - [(4) 'Electoral area' means an area containing the electors of a committee.]
 (Omitted by Act V of 1944).
- [(5) 'Excepted temple' means and includes a temple, the right of succession to the office of trustee or the offices of all the trustees (where there are more trustees than one) whereof has been hereditary, or the succession to the trusteeship whereof has been specially provided for by the founder.] (Omitted by Madras Act X of 1946).

[Explanation.—No action taken by a Board in pursuance of the power conferred on it by clauses (a) and (b) of subsection (1) of section 63 shall be deemed to have the effect of converting an excepted temple into a non-excepted temple.] (Omitted by Madras Act X of 1946).

- [(6) 'Hereditary trustee' means the trustee of a math, temple or specific endowment succession to whose office devolves by hereditary right or is regulated by usage or is specifically provided for by the founder, so long as such scheme of succession is in force";] (Substituted by Madras Act X of 1946).
 - (7) 'Math' means an institution for the promotion of the Hindu religion presided over by a person whose duty is to engage himself in spiritual

service or who exercises or claims to exercise spiritual headship over a body of disciples and succession to whose office devolves in accordance with the directions of the founder of the institution or is regulated by usage; and includes places of religious worship other than a temple or places of religious instruction which are appurtenant to such institution.

Non-hereditary trus tee. (8) 'Non-hereditary trustee' means a trustee who is not a hereditary trustee.

Notified temple. [(8-A) 'Notified temple' means a temple notified by the [Provincial Government] under section 65-A.] (Inserted by Madras Act XII of 1935).

Person having interest' means—rest. (9) 'Person having interest' means—

(a) in the case of a math ¹[or a specific endowment attached to a math] a disciple of the math or a person of the religious persuasion to which the math belongs, and

(b) in the case of a temple '[or a specific endowment attached to a temple] a person who is entitled to attend at the performance of worship or service in the temple or who is in the habit of attending such performance or of partaking in the benefit of the distribution of gifts thereat.

Prescribed. (10) 'Prescribed' means prescribed by the [Provincial Government] by rules made under this Act.

(11) 'Religious endowment' or 'Endowment' means all property belonging to, or given or endowed for the support of, maths or temples or for the performance of any service or charity connected therewith and includes the premises of maths or temples but does not include gifts of property made as personal gifts or offerings to the head of a math or to the archaka or other employee of a temple.

[Explanation.—All property which belonged to, or was given or endowed for the support of a temple or math or for the performance of any service or charity connected therewith shall, for the purposes of this definition, be deemed to be a

⁽¹⁾ Inserted by Madras Act X of 1946.

'religious endowment' or 'endowment' notwithstanding that the temple or math has ceased to exist or ceased to be used as a place of religious worship, whether before or after the commencement of this Act.] (Added by Madras Act X of 1946).

- [(11-A) 'specific endowment' means any property or money endowed for the performance of any specific service or charity in a temple or math.] (Inserted by Madras Act X of 1946).
- (12) 'Temple' means a place, by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or any section thereof, as a place of religious worship.
- (13) 'Trustee' means a person, by whatever designation known, in whom the administration of a religious endowment is vested and includes any person who is liable as if he were a trustee.

Clause (6): Hereditary trustees.—"Though the Bill aims at efficient control over the administration of all classes of Hindu religious endowments certain special privileges have had to be accorded to endowments under the management of hereditary trustees, especially in the matter of succession, liability to inspection, removal from office, etc. It has to be remembered that such endowments have since 1863 been left practically to themselves, and several of them are under the charge as trustees, of proprietors of impartible estates and of members of the Nagarathar community who are generally regarded in this presidency as not merely liberal endowers of temples but efficient administrators of the endowments in their charge."

Claim to hereditary right.—A claim to hereditary right of management can only succeed if it is shown that the founder has laid down such rule as to management by the terms of the original foundation.²

Evidence and proof.—Although the institution of hereditary office of trustee is now to firmly established to be altered without legislation, yet, as was remarked by Mr. Justice Sadasiva Aiyar

⁽¹⁾ See Statement of Objects and Reasons.
(2) Phatmabi v. Haji Musa Sahib, 38 M. 491 (495 to 497): 26 M.

⁽³⁾ Per Wallis, C.J., in Gouranga Sahu v. Sudevi Mata, 40 M. 612 (617: 32 M.L.J. 597.

"A claim to succeed by hereditary right to a trustee's office or to a religious office or any other office should be looked upon with strong disfavour by courts, whether the office was created by a Hindu or a Mahomedan or an adherent of any other creed". In Ramdas v. Hanumantha Rao2, it was held that where the members of a family have held the office continuously since 1797 and there was no evidence that it was held by any other family, it sufficient to prove a hereditary right. which the office was held dispute without generations by the ancestors may, however, be mamany terial evidence to show if the gift was hereditary.3 But a mere succession of a son to a father in a trusteeship of a temple does not necessarily create hereditary right but the court might take such fact into consideration as a piece of evidence along with other circumstances.5 The Court would not be authorized to find in favour of a rule of succession by primogeniture solely from the circumstance that persons appointed were usually the eldest sons. 6 As to whether it will amount to proof of hereditary right see Phatmabi v. Hajee Musa Sahibi.

Office vested in joint family-Junior member not entitled to take part.—Where the office of trustee of a temple is admittedly vested in the joint family, which has no beneficial interest therein, the senior member of the family is, so long as the members of the family remain undivided, entitled not only to manage the family properties, but also to exercise the right of management vested in the family on its behalf. Until actual partition is made, no junior member, in the absence of an agreement conferring on him the right, is entitled to management of the trust in rotation, and such right cannot be decreed by the court, merely on the score of convenience.8

In the Full Bench case of Boidya Gourango Sahu v. Sudevi9, Chief Justice Wallis in giving his opinion on the reference commenced as follows:-

"The institution of the hereditary office of trustee of religious and charitable endowments is, in accordance with the custom of

Phatmabi v. Haji Musa Sahib, 38 Mad. 491.
 12 I.C. 449 at p. 451; 21 M.L.J. 952; 36 Mad. 364.
 Nimaye v. Mooroolee, 1 W.R. 108 (109) (Civil Rule).

⁽⁴⁾ Appasami v. Nagappa, 7 M. 499.

^{(5) 6} M. 54.

⁽⁶⁾ Rahimtulla v. Mahomed, 8 M.H.C.R. 63: 11 M.Jur. 245.

⁽⁸⁾ Thandavaraya Pillai v. Shanmuga, 32 Mad. 167: 4 M.L.T. 486: 19 M.L.J. 59. As to hereditary office, see Phatmabi v. Haji Musa Sahib, 38 Mad. 491; 26 M.L.J. 115.

^{(9) 40} Mad. 612; 32 M.L.J. 597.

the country, recognized in Madras Regulation VII of 1817 and Act XX of 1863 and is too firmly established to be altered without legislation. It affords, however, no guarantee of fitness for the exercise of the office, and may be held largely responsible for the numerous cases of waste and misappropriation of these endowments which come before the Court, and, it is to be feared, for a still larger number which are never brought before it. The exercise and enjoyment of the office in the event of the successive partitions to which families in India are liable also present difficulties which are illustrated by Ramanathan Chetty v. Murugappa Chetty, which was also affirmed by the Privy Council.

It is now established by Privy Council in Muhammad Ismail v. Ahmed Moola that the court has always a judicial discretion to vary any rule of management laid down by the founder which it may find either not practicable or not in the best interests of the institution. And this principle though laid down in respect of a Muslim Wakf is equally applicable to Hindu endowments of a public nature.

The definition of a "hereditary trustee" in S. 9 (6) (before amendment) enumerates four methods of devolution which qualify a trustee to be known as a hereditary trustee. Of these four methods of devolution only the first and the last have been specified as qualifying a temple to be considered an excepted temple under S. 9 (5) of the Act. On the general rule expressio unius exclusio alterius it is impossible to resist the inference that when the legislature in the definition of an excepted temple specified only two of the four types of devolution which are recognised in the definition of a hereditary trustee they intended to exclude the other two types of devolution. It follows therefore that a temple whose trustee succeeds by nomination by his predecessor or merely in accordance with usage does not come within the definition of an excepted temple. The definition of a hereditary trustee in Cl. (6) of S. 9 cannot be read into the definition of an excepted temple in Cl. (5) of S. 9. I.L.R. (1941) Mad. 559 -53 L.W. 170-A.I.R. 1941 Mad. 510-(1941) 1 M.L.J. 250. (Case before Amending Act X of 1946).

The provision for the succession to the trusteeship of an institution which is made by the founder of it is something which is done once for all at or about the time of the foundation. The words in sub-S. (5) of S. 9 do not imply that the provision made

^{(1) 27} Mad. 192: 13 M.L.J. 341.

^{(2) 29} Mad. 283: 1 M.L.T. 327: 16 M.L.J. 265: 3 A.L.J. 707: 8 Bom.L.R. 498: 10 C.W.N. 825: 4 C.L.J. 189: 33 I.A. 139 (P.C.).

^{(3) 35} I.C. 30: 43 Cal. 1085: 43 I.A. 127: 31 M.L.J. 290 (P.C.).
(4) Dharam Das v. Sadho, 40 I.C. 177 (180). See Ganapathi Iyor on Religious Endowments, pp. 471 to 474.

by the founder must continue to be in force at the time of the petition under S. 84 of the Act. (1938) M.W.N. 616—47 L.W. 647—A.I.R. 1938 Mad. 321. (Case before Amending Act X of 1946).

Clauses (7) and (12)—Maths.—With reference to the inclusion of maths within the scope of this Act, the Select Committee said:—

"It is admitted that the head of a math is not at liberty to alienate the corpus of the math property except in circumstances which would almost justify alienation of ordinary trust property. As regards the income from such corpus and what the head of a math may himself earn by way of offerings and gifts, he is according to the evidence that has been given before us, expected to use it only for purposes connected with the math and with himself as head thereof. Any other appropriation of such funds would be deemed to be improper. We cannot, therefore, subscribe to the somewhat extreme view that a math and its endowments and income constitute the absolute personal property of the matadhipathi for the time being; and it is significant that exponents even of this extreme view have conceded before us that, where the circumstances require such a step, it would be desirable to associate the disciples in the administration of an ill-managed The math as an institution exists for the spiritual institution. welfare of its disciples. The matadhipathi is an ascetic and could. ex hypothesi, have no interests other than those which are proper and which subserve the interests of his disciples. Large properties are in the hands of many of them, and there is evidence that several of them have mismanaged and misused the properties in These facts and considerations are ample justifitheir charge. cation for our declining to drop maths out of the Bill altogether.

"We recognize at the same time that the powers of the head of a math over math property, especially the income therefrom are wider than those of an ordinary trustee and that the matadhipathi, by virtue of the spiritual veneration in which he is held by his disciples, occupies a position which entitles him to privileged treatment. We have therefore provided that local committees shall have nothing to do with maths, that, ordinarily, the head of a math need send only a budget and an annual account, and that he should maintain proper accounts and get them audited. It is only in cases where mismanagement is proved or where a number of disciples desire such a course that arrangements for greater control may be devised."

⁽¹⁾ Report of Select Committee. Referring to the inclusion of Maths within the scope of this Act Mr. Ramachandra Rao, as member of the Select Committee, in the course of his

Distinction between temples and maths.—The religious foundations known as Devasthanams or temples are the most numerous in India, and have the largest endowments especially in the shape of lands, assignment of public revenue, and jewellery. These institutions have been established for the spiritual benefit of the Hindu community in general, or for that of particular sects or sections thereof. Next to the temples, the most important religious foundations in this country are the ancient maths or monasteries presided over almost invariably by sanyasis or monks. The object of these maths (or mutts) is generally the promotion of religious knowledge, and the imparting of spiritual instruction to the disciples, and followers of the math. In the case of maths, though there are idols connected therewith, the worship of them is quite a secondary matter. The two classes of institutions. namely, temples and maths, are thus supplementary in the Hindu Ecclesiastical system, both conducing to spiritual welfare, the one by affording opportunities for prayer and worship, the other by facilitating spiritual instruction and the acquisition of religious knowledge. In the case of temples, the ideal person is the idol itself; in the case of maths the ideal person is the office of the spiritual teacher, Acharya, who, as it were, is incarnate in the person of each successive Swami or head of the math. ference in the character of the juridical person in the case of temples and maths leads to this result, that while the shebait of a temple forfeits his position as such by reason of his lunacy, the head of a math does not.1

Allied terms explained—Devasthanam, Math, Shebait, Mohunt, Debutter property.—Where property is devoted absolutely to religious purposes, in other words, where the dedication is absolute and complete, the possession and management of the property belongs, in the case of a devasthanam or temple, to the manager of the temple, called shebait; and, in the case of a math, that is,

Minute of Dissent, said:—"In view of the long current of decisions in the Presidency defining the position of Matadhipathis the fact that the heads of Mutts have frequently abused their position is itself not a sufficient reason for bringing them under this Bill without a due deliberation of the questions involved and without having all the materials before us. The definition of "mutt" and "religious endowment" read togeher makes it quite clear that even voluntary offerings of disciples like "gurupuja" or, "pathapuja" given by disciples to the heads of the mutts will have to be accounted for by them. I think the Bill has gone too far in this respect and is likely to lower the position of the spiritual heads of these institutions. The problem is beset with difficulties and the hasty inclusion of all mutts in the Bill so as to bring them under secular control and the inclusion of even voluntary offerings among properties for which matadhipathis are liable to account are the two features of the Bill to which objection would be legitimately taken."—Minute of Dissent by Mr. Ramachandra Rao.

(1) Vidyahpurna v. Vidyanithi, 27 M. 435: 14 M.L.J. 105.

an abode for students of religion, to the head of the math, called mohunt; and this carried with it the right to bring whatever suits are necessary for the protection of the property. Every such right of suit is vested, in the case of temple property, in the shebait, and in the case f math property, in the mohunt. Property dedicated to religious uses is called debutter property. "Debutter" means, literally, belonging to a deity.2

Property held by an idol.—"It is only in an ideal sense that property can be said to belong to an idol; and the possession and management of it must in the nature of things be entrusted to some person as shebait or manager."

Property held by a math.- "A math, like an idol, is in Hindu Law a juridical person capable of acquiring, holding and vindicating legal rights, though of necessity it can only act in relation to those rights through the medium of some human agency (i.c.) conducted by and in the name of, the manager (mohunt)."4

Idols and maths are both juridical persons.-"The Hindu Law, like the Roman Law and those derived from it, recognize not only corporate bodies with rights of property vested in the corporation, but the juridical persons or subjects called foundations."5 Temples and maths are religious foundations.

Suit by or against an idol.—It has been held by a Full Bench of the Allahabad High Court that a suit in respect of property held by an idol should be brought in the name of the idol as represented by the manager.6

Cl. (7) and S. 69 .- Certain lands were granted to the head of a mutt for the purpose of defraying the cost of lighting of lamps and performance of pujas at the shrines within the mutt and other lands were held by it for the maintenance of worship in it. Public worship took place within its precincts, and there was also religious instruction provided for members of the Vira Saiva sect. The properties of the mutt were for some time treated as if they were the private properties of the family of the head of the mutt. Held, that the mutt was a public religious endowment and the Board had the right to call upon those in charge of the mutt to make the contribution under S. 69 of the Act. A mutt would

⁽¹⁾ Jagadindra Nath v. Hemanta, 32 C. 129: 31 I.A. 203; Babajirao v. Luxmandas, 28 B. 215.

⁽²⁾ Ibid; Mulla's Hindu Law, chapter on Religious and Charitable Endowments.

⁽³⁾ Prosunno Kumari v. Golab Chand, 14 Beng. L.R. 450 (459): 2 I.A. 145 (P.C.).

⁽⁴⁾ Babajirao v. Luxmandas, (1903) 28 B. 215 (223).
(5) Manohar v. Lakhmaram, 12 B. 247 (263).
(6) Joghi Rai v. Basdeo Prasad, 33 All. 735.

not fall within the purview of the Act unless it can be regarded as being a public religious endowment. 48 L.W. 735—A.I.R. 1938 Mad. 810—(1938) 2 M.L.J. 85.

Scope of cl. (9)—"Persons interested."—Cl. (9) mainly reproduces section 15 of the Act of 1863 and is intended to supersede the decision of the majority of the Full Bench in I.L.R. 42 Mad. 360—36 M.L.J. 396 and is in accordance with the views expressed in that case by Kumaraswami Sastri, J. and Abdur Rahim, J. (See however, 41 M.L.J. 20, where the views expressed in 42 Mad. 360 have been distinguished).

Persons having a right to worship are persons interested. But the mere possibility of an interest or the mere possibility of succession, does not give a right to sue as the interest must be an existing one and not a mere contingency. Thus the representative of the founder or the beneficiaries under the trust may be said to have an interest in the trust so as to entitle them to call for its administration; but a person cannot, it has been held, be said to have an interest in a trust merely because he is the possible successor of the present holder of the office. Officiating priests, as also persons who act as pandas or guides and priests of the pilgrims, have an interest; and also persons ex officio concerned in the performance of worship and entitled to maintenance from the temple funds.

Inhabitants of parish.—The inhabitants of a parish affected by a scheme are persons interested in the charity, according to the meaning of the terms as used in section 43 of the English Charitable Trusts Act of 1853.

- Cl. 10: "Prescribed"—Rules, Bye-laws and Regulations under the Act.—The word "Prescribed" is used with reference to rules made under this Act by the Local Government (See S. 71 infra). The Act also empowers the Board to make bye-laws under S. 19.
- Cl. (11): Religious Endwments and Maths.—"The definition of the term 'religious endowment' in this section is comprehensive. Mutts have been deliberately included. They are endowed with large properties and complaints of mismanagement have in

⁽¹⁾ Sajedur Raja v. Gour Mohun, 24 C. 418 (427); Chintaman v. Dhondo, 15 B. 612 (622, 623); Manohar v. Lakhmiram, 12 B. 247; Jugul Kishore v. Lakhmandas, 23 B. 659; Radhabhai v. Chimnaji, 3 B. 27. See also 24 I.C. 712.

⁽²⁾ Mohiddin v. Sayiduddin, 20 C. 810 (815).

⁽³⁾ Budh Singh v. Niradbaram Roy, supra; and see as to descendants of founder, Jaggamoni v. Nilmony, 9 C. 75; see also 41 M.L.J. 20=61 I.C. 631.

⁽⁴⁾ Shailajananda v. Umeshanunda, 2 C.L.J. 460.

⁽⁵⁾ Ram Churn Tewary v. Protap Chandra Dutt, 2 C.L.J. 448.

their case been very pronounced. The definition will also include kattalais1 which are endowments created by private individuals for the performance of any service or charity connected with a public temple. The definition covers not merely the properties that are endowed for a temple or mutt, but the temple and mutt themselves."2

"Endowment," meaning of.—By S. 66 of the English Charitable Trusts Act the expression "endowment" means and includes all lands and real estate whatsoever, of any tenure, and any charge thereon or interest therein, and all stocks, funds, monies, securities, investments, and personal estate whatsoever, which for the time being belong to or are held in trust for any charity or for all or any of the objects or purposes thereof.2

The following cases as to what constitutes an endowment decided under the Charitable Trusts Acts may also be noticed with advantage.4

'Endowment.'-It has been laid down that the word "endowment" is not to be restricted to property held upon some special trust in connection with a charity, as distinguished from the general purposes of a charity, and that all property of every description belonging to or held in trust for a charity, and whether held upon trusts or conditions which render it lawful to apply the capital to the maintenance of a charity, or upon trusts which confine the charitable application to the income, is an "endowment" within the meaning of the Act.5

As to kattalai, see S. 41 and notes thereunder.
 See Statement of Objects and Reasons.
 Chilcott, p. 92. The giving of water and gruel mainly to those who drag the car on the day of the car festival in a temple must be held to be a pious and charitable service connected with the temple. An endowment for the maintenance of a water-pandal for giving water and for distribution of gruel is therefore a religious endowment as defined by S. 9 (11). A charity may be secular and yet connected with the temple. A pious service which is secular, though it may not be a religious service may still be a religious endowment within the meaning of S. 9 (11) if such charitable service is connected with a temple. Endowments Board, Madras v. Marutha Naicker, 58 L.W. 219=A.I.R. 1945 Mad. 368=(1945) 1 M.L. J. 345. A grant of land to holders of the offices of Swasthivachakam and Vedaparayanam in a temple constitutes a personal grant subject to or burdened with the performance of those services in the temple, and comes within the exception contained in the last portion of S. 9 (11) of the Madras Hindu Religious Endowments Act, and is not therefore liable to pay contribution to the Board under S. 69. (Somayya, J.) Venkata Narayana v. Hindu Religious Endowments Board, Madras. 58 L.W. 434—1945 M.W. N. 517=(1945) 2 M.L.J. 220.

⁽⁴⁾ See next Footnote. (5) Clergy Orphan Corporation, In re, 64 L.J. Ch. 66, 73; see also S. 62, Eng. Ch.T. Act. In the case of Corporation of the Sons of the Clergy v. Sutton, 29 L.J.Ch. 393: 27 Beav. 651. Lord Romilly held that

An "endowment" of a charity, the trustees of which have power so to deal with its funds that they may cease to be the "endowment" of the charity, is nevertheless subject to the jurisdiction, so long as the power of revocation remains unexecuted. (In re Gilchrist's Trusts, 64 L.J. Ch. 298), and this is so whether the power of revocation applies to the corpus or income of the endowment.1

Freehold2 or leasehold3 land occupied by the charity, but not producing income, is also an endowment.

Gifts or endowments for religious or charitable purposes .-The following have been held to be gifts for religious or charitable purposes, gifts for the establishment and worship of an idol,4 or for feeding Brahmans and the poor,5 or for the performance of religious ceremonies, such as Sraddha, Durga Pujah and Lakshmi Pujah,6 or for the endowment of a University7 or an hospital.8

"Charitable purposes" within the English Income-Tax Act, 1842.—In the case of Commissioners of Income-Tax v. Pensel® (which is now the leading authority), certain property in England

(1) In re Sir R. Peel's School at Tamworth, L.R. 3 Ch. 543.

(4) Bhupati Nath v. Ram Lal, 37 C. 128.

(5) Dwarkanath v. Barroda, 4 C. 443. (6) Prafulla v. Jogendranath, 9 C.W.N. 528. (7) Manorama v. Kalicharan, 31 C. 166. (8) Fanindra v. Adm.-Gen. of Bengal, 6 C.W.N. 321.

(9) 61 L.J. (Q.B.) 265; (1891) A.C. 531.

the word "endowment" applied only to endowments for a special purpose in connection with a charity, and not to endowments for the general purposes of a charity. This meaning of the word "endowment" was followed in the cases of Royal Society of London v. Thompson, 50 L.J.Ch. 344: L.R. 17 Ch.D. 407; Corporation of the Sons of the Clergy v. Skinner, 62 L.J.Ch. 148; L.R. (1893) 1 Ch. 178; and Finnis v. Farbes, 53 L.J.Ch. 141; L.R. 24 Ch.D. 591; but In re Clergy Orpham Corporation, (1894) 3 Ch. 145 (C.A.) this ratio decidendi of Lord Romilly's was overruled, and the Court of Appeal held that the test whether the property of a charity is "an endowment" within the meaning of the English Charitable Trusts Act is not whether it is applicable to the general purposes of the charity, or only to some specific purpose in connection with it although this circumstance may be important in considering whether the endowment is exempt from the provisions of the Act in the case of a charity falling within the description in S. 62 inasmuch as the words "in trust for any charity, or for all or any of the objects or purposes thereof," in the interpretation clause, precluded it, but that all property of every description belonging to or held in trust for a charity is an "endowment" within the meaning of the Act.

⁽²⁾ Re Clergy Orphan Corporation (1894) 3 Ch. 145, (151); Re Stockport Ragged Industrial and Reformatory Schools, (1898) 2 Ch. 687, 700;

A. G. v. Mathieson, (1907) 2 Ch. 393, 395.

(3) See Re Church Army, (1906) 75 L.J. (Ch.) 467.

had been conveyed to trustees in trust to apply the income for the purposes (a) of promoting and supporting missions to heathen nations, (b) of maintenance and education of children of ministers and of missionaries (c) maintaining and supporting certain establishments for single persons and widows belonging to the Moravian Brotherhood; and the Court held that the income so applied came within the exemption in favour of charitable purposes in the Income-Tax Act. 1842, Sec. 61.

It was also held that the words "charitable purposes" in the Act, were not restricted to the meaning of relief from poverty, but must be construed according to the legal and technical mean-

ing given to those words by English law.1

Offerings to idol.-Offerings made to an idol belong to the idol as much as land dedicated to an idol and not to the officiating priest, unless there be a custom or an express declaration by the founder to the contrary. Such offerings are intended to contribute to the maintenance of the shrine with all its rites, ceremonies and charities, and not to become the personal property of the priest.1-a

Presumptions in case of gifts expressly for religious purposes. -In the case of a charity for the support of a religious establishment generally or the purpose of religious instruction, two presumptions arise; first, that the founder intended to support an establishment belonging to some particular form of religion and that he intended some particular doctrine of religion to be taught and secondly, that this establishment and doctrine were those which he himself supported and professed, and the Court will look carefully at his course of life and conduct and spell out expressions not merely in the instrument of foundation but in his will and works to ascertain what were the doctrines and opinions entertained and professed by him.2

The intention of the founder is a question of fact," not always easily ascertained.4

Extrinsic evidence.—Where there is no expressed intention,5 or the language is ambiguous,6 and in those cases only, the objects

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⁽¹⁾ Commissioners of Inland Revenue v. Scott, (1892) 2 Q.B. 152: 61 L.J.Q.B.D. 432; Southwell v. Governors of Royal Holloway College, Egham, (1895) 2 Q.B. 487; In re Macduff, (1896) 2 Ch. 451 at p. 466. (1-a) Manohar v. Lakhmiram, 12 Bom. 247 (265). (2) A. G. v. Calvert, (1857) 23 Beav. 248, per Romilly, M.R. at p. 259; Halsbury's Laws of England, Vol. IV, pp. 162, 163. (3) Shore v. Wilson, (1842) 9 Cl. and Fin. 355, H.L. (4) Foley v. Wonter, (1820) 2 Jac. and W. 245. (5) A. G. v. Murdoch, (1849) 7 Hare 445. (6) A. G. v. Calvert, (1857) 23 Beav. 248, per Romilly, M.R. at p. 263.

and mode of executing the trust may be ascertained from a consideration of extrinsic circumstances.

The meaning of the founder of the trust may be explained by evidence as to the character of the congregation for whose benefit the gift was made.1

Validity of endowments for religion or charity.—The High Court of Calcutta has expressed a doubt as to whether gifts to Pundits holding tolls for learning in the country at the time of the Durga Pujah, or for the Mahabharat and Pooran, or for the prayer of God during certain months, are valid.1-a

Superstitious uses not forbidden.—The English law relating to superstitious uses does not apply to Hindu religious endowments. Thus a gift in favour of an idol, or for the performance of the worship of a deity is valid according to the Hindu Law, though it may not be valid according to the English Law.-1b Dispositions for religious purposes are highly favoured by Hindu law, and the leaning of the Courts also is in the same direction. Dedication of property by a Hindu to a deity is not only lawful, but commendable in a high degree from the Hindu point of view.2

Gifts void for vagueness and uncertainty.-A gift or devise to dharam is void for vagueness and uncertainty. The objects meant by that word are too vague and uncertain for the administration of them to be under the control of a Court.3

Administration of endowments by the Court.—It is a maxim of equity, that the execution of a trust shall be under the control of the Court. The trust therefore must be of such a nature that it can be under that control. For that purpose it is necessary that the subject and object of the trust must both be such as can be ascertained by the Court. If the subject or object cannot be ascertained, the trust cannot be enforced by the Court, and it is void.4

(1-a) Dwarkanath v. Burroda, 4 C. 443.

Bom. 646. See also 30 M. 340.

⁽¹⁾ A. G. v. Molland, (1832) Young 562, where teaching "the Gospel of Christ under the name of orthodoxy", was so explained.

⁽¹⁻b) Juggat Mohini v. Sokheermoney, (1871) 14 M.I.A. 289, 301, 302.
(2) Bhupati Nath v. Ram Lal, 37 C. 128 at pp. 136, 137 and 141.
(3) Ranchordas v. Parvatibai, 23 B. 725: 26 I.A. 71, affirming 21

⁽⁴⁾ Morice v. The Bishop of Durham, (1804) 10 Ves. 522.

In the case of a gift to dharam it has been held by the Privy Council that the objects which can be considered to be meant by that word are vague and uncertain. In Wilson's Dictionary the word dharam is defined to be law, virtue, legal or moral duty. Relying upon this definition of dharam, the Judicial Committee held that the word dharam was as vague as the words "purpose charitable or philanthropic which, on account of their vagueness, render a trust for those purposes void in the English law. 23 Bom. 725; 26 I.A. 71, supra; Devashankar v. Motiram, 18 Bom. 136.

A gift "for the performance of ceremonies and giving feasts to Brahmins" is not void for uncertainty. 1 Nor is a devise of property to executors upon trusts to distribute the same among the testator's poor reations, dependents and servants.2

S. 9 (11): Kattalai-If Endowment.-A Kattalai is a religious endowment within the meaning of S. 9 (11). 41 L.W. 454-1935 M.W.N. 302-68 M.L.J. 549. (See S. 41).

Kattalai—Meaning of.—The definition of religious endowment in S. 9 (11) is wide enough to include a Kattalai. In the stricter sense, a Kattalai is a religious endowment the object of which is the performance of some kind of religious duty in the temple for the benefit of some other individual or institution outside the temple. In the lesser sense, there is no outside institution or individual who is the beneficiary but the temple itself is the beneficiary. 1933 M.W.N. 1235.

Offerings and gifts—If personal properties of poosaries or trustees.—Properties consisting of gifts and offerings made to the temple by worshippers are prima facie temple properties and not the personal properties of the poosaries or trustees; it is for the latter to prove any rights they claim in them. 41 L.W. 199=-1935 M.W.N. 127=68 M.L.J. 178.

Capacity to make an endowment .- A Hindu who is of sound mind, and not a minor, can dispose of his property by gift or by will for religious and charitable purposes.

Subject of Endowment .- A Hindu may dedicate for religious and charitable objects all property which he can validly dispose of by gift or by will. There is nothing to prevent a Hindu from dedicating the whole of his property for religious and charitable purposes.3

The same has been held of a trust for sarakam (good work) (Bai Bapi v. Jamnadas, 22 Bom. 774, and a trust for "purposes of popular usefulness or for purposes of charity as may be approved by the trustees?' (Trikumdas v. Haridas 31 Bom. 583). But a gift to sadavar to be established at a definite place is valid. (Parvati v. Ram Baran, 31 C. 895). A gift to "such charities as the trustees may think deserving" is also valid (Ibid.) and so also a gift with power to trustees to give away the property "in such manyor and to such religious and shoritable purposes as there charity in such manner and to such religious and charitable purposes as they

charity in such manner and to such religious and charitable purposes as they may, in their discretion think proper" (Parvati v. Ram Baran, 31 C. 895).

(1) Lakshmishankar v. Vijnath, 6 B. 24.
(2) Manorama v. Kali Charan, 31 C. 166.

A gift for the spread of Hindu religion is void, Venkatanarasimha v. Subba Rao, 46 M. 300, but there is a conflict of opinion whether a gift for the spread of the Sanskrit language is void [46 M. 300, 314 and 315 (Spencer, J.) 325-340]. See the subject dealt with in Justice Mulla's Hindu Law in the Chapter under "Religious and Charitable Endowments." (3) MacNaghten on Hindu Law, p. 335.

Cl. 11-A.—As to specific Endowments, see S. 41, infra.

Cl. (12). Scope of section.—Sec. 9, Cl. 12 clearly contemplates a temple in actual existence as a place of public worship. There is nothing in the Act which says that the trustees shall have jurisdiction to decide the way in which the income of the particular endowments attached to temples which before the Act came into force ceased to exist as places of public worship is to be applied. That function ordinarily belongs to Civil Courts. L.W. 535=A.I.R. 1928 Mad. 1272=55 M.L.J. 605.

Temples.—The origin of Hindu temples has been traced as follows by Mr. Justice Sadasiva Iyer in Gopala v. Subramania1:

"The origin of image worship in temples is stated in authoritative Puranas to have been in the Threthayugam and subsequent ages. In the first or Krithayugam, God was worshipped by mankind (which consisted of only one caste) as immanent in the heart of everything, and worship consisted solely in service to one's fellow-creatures. As the spirit of universal brotherhood decayed in the second age and notions of inferiority and superiority among men were indulged in, the inferior man was asked to worship God's higher manifestations in the superior man. Then disputes naturally arose about relative superiority and inferiority and the sages considered it expedient to introduce image worship in order to prevent the quarrels about superiorities, and in order that all men (who had now become divided into four distinct castes) without unseemly squabbles about their relative excellences might worship God in a common image. Though image worship was thus recommended and laid open to all castes, it was clearly recognised as not the highest form of worship. The appropriate mode of worship for the Brahmins was held to be through the media of the Fire and the Sun, and the highest form of worship for all castes was always recognised as that which prevailed in the first age. is clear from the above that temples were intended for the worship of people belonging to all the four castes without exception. Even outcastes were not wholly left out of the benefit of temple worship, their mode of worship being, however, made subject to severe restrictions as they could not pass beyond the Dwajasthambam (and sometimes not beyond the temple outer gate), and they could not have a sight of the images other than the procession images brought out at the times of festivals. The Agamas and the Thanthras which regulated the worship in the temples laid down rules as regards what caused pollution to a temple and as regards the ceremonies for removing pollution when caused."2

^{(1) 26} I.C. 7 at p. 10: 27 M.L.J. 253: 1 L.W. 675. (2) 27 M.L.J. 253 (258): 1 L.W. 675 (679, 680): 26 I.C. 7 (10). See also observations of Muthusami Iyer, J. in Venkatachalapathi v. Subrawudu, 13 M. 293.

A "temple" is a place of "public religious worship". test to find out whether the worship in an institution is religious or not is not whether it conforms to any particular school Agama Sastras; the question must be decided with reference to the view of the class of people who take part in the worship. they believe in its religious efficacy, in the sense that by such worship they are making themselves the object of the bounty of some super-human power, it must be regarded as "religious wor-It may be difficult to mark the dividing line between a mere commemoration of the event and celebration of worship in the case of heroes who are said to have lived several centuries ago but have continued all along to be the subject of public homage. But the performance of Nitya Naivedya Deeparadhana,-though this may be performed not all through the year but only on certain days in the year,-the offering of animal sacrifices and the distribution of those offerings amongst the assembled audience certainly carry the celebration beyond the limits of a mere commemoration. 48 L.W. 791=A.I.R. 1939 Mad. 134=(1939) 1 M.L.J. 134. The exclusion of others or outsiders from interference with the management of the institution by the founders will not take away the institution from the definition of a "temple" in S. 9 (12). So long as there was no intention on the part of the founders to exclude the right of worship the restriction of the right of outsiders to interfere in the management of the temple is not a determining factor in considering whether the temple is a public or private temple. Where it is contemplated in the trust deed or deed of endowment that kainkaryams in the temple are to be undertaken by outsiders, it has to be inferred that the founders contemplated worship in the temple by persons unconnected with their family. If the Hindu inhabitants of the locality are very few, there cannot be any positive evidence as to many outsiders coming and worshipping at the temple. In such cases the reference to the public can only signify such public as is available in the locality. 46 L.W. 388—A.I.R. 1937 Mad. 973—(1937) 2 M.L.J. 485. There is of course no legal presumption that temples in Malabar are public temples until the contrary is proved; but if a temple is shown to possess certain characteristics which are mentioned as those of a "temple" as defined in S. 9 (12) it can fairly be presumed even in Malabar that it is a public temple until the contrary is established. Under S. 9 (12) the user, by the public for purpose of religious worship has to be proved as a The question of intention to dedicate the place for the use of the public or of the user by the public being as of right is necessarily a matter of inference from the nature of the institution and the nature of the user and the way the institution has been administered. 1937 M. W. N. 1171-A. I.R. 1938 Mad. 209.

'Temple'-Mere ruins whether sufficient.-Where there was nothing remaining of a temple except a heap of stones, its site and its name, and the establishment of the temple had completely disappeared and ceased to be used as a place of public worship at a time long beyond living memory, *Held*, that there was no temple within the meaning of S. 9 (12). 55 M. 636=137 I.C. 758=1932 M.W.N. 442=35 L.W. 588=A.I.R. 1932 M. 470=62 M.L.J. 594.

Cl. (13). "Trustee"-"The term 'trustee' has been so defined as to include a manager or superintendent referred to in sections 3 and 4 of the Act of 1863. The definition will include a Matathipathi to the extent that he is a trustee for the secular administration of the mutt and temples in his charge. It also covers the cases of guardians of minors and of persons who get into possession of trust properties without due authority for the time being."1

"Property belonging to a religious institution may by the usage and custom of the institution vest in a trustee other than the spiritual head."2

Female Manager.-A Hindu female may be a manager of a religious endowment, but cannot perform the spiritual functions.3 According to the practice and precedents obtaining in the Madras Presidency, a Hindu female is not incompetent by reason of her sex to succeed to the office of Archaka in a temple and to the emoluments attached thereto.4

The definition of "trustee" in S. 9 (13) clearly includes a de facto trustee administering the trust honestly and holding himself liable for the properties of the trust. A de facto trustee of a Hindu temple has those powers which are conferred upon a trustee under the Act, and such a trustee in actual management of the temple and acting bona fide in the interests of the institution can validly pass an order dismissing a temple servant or officer provided that the dismissal is for good grounds and that procedure is one to which no objection can be taken. A technical defect in legal qualification of the trustee at the time of the dismissal would not enable the dismissed servant or officer to question the validity of the dismissal in a Civil Court in view of the provisions of S. 43 read with S. 93 of the Act which are intended to oust the jurisdiction of the the Civil Court to question the

⁽¹⁾ See Statement of Objects and Reasons.
(2) Arunachalam v. Venkatachalapathi, 46 I.A. 204; 43 M. 253.
(3) See Kanoki Debi v. Gopal, 9 C. 766; 10 I.A. 32; 13 C.L.R. 30.
See also 41 Mad. 886 (38 Mad. 850 overruled; 35 All. 283 (P.C.) Dist.).
(4) Annaya v. Ammaka, 41 M. 886; 35 M.L.J. 196 (F.B.) (Per Wallis, C.J., Spencer, J. and Justice Sadasiva Tyer dissenting).

propriety of any order of dismissal. 1940 M.W.N. 71=A.I.R. 1940 Mad. 617.1

CHAPTER II.

BOARDS OF COMMISSIONERS.

Constitution of Board. 10. (1) The [Provincial Government] may, by notification,

(a) direct the constitution of a Board for the whole Presidency or for any specified part thereof,

(b) vary the strength or territorial jurisdiction of any such Board, or

(c) abolish any such Board:

Provided that not more than one Board shall have jurisdiction over the same math or temple or the endowments connected therewith:

Provided further that, when the [Provincial Government] propose to direct the constitution of more Boards than one under this sub-section or to vary or abolish any Board, a draft of the notification proposed to be issued shall be published in the prescribed manner and laid ²[before both the Chambers of the Provincial Legislature] and the notification shall not be issued ³[unless both the Chambers] by resolution ⁴[approve] such draft.

(2) The [Provincial Government] may pass such orders as they may deem fit as to the transfer or other disposal of the assets and liabilities of a Board which is varied or abolished.

(1944) 2 M.L.J. 326 (F.B.).

(2) Substituted for 'on the table of the Legislative Council' by the Second Schedule to the Government of India (Adaptation of Indian Laws)

(3) Substituted for "unless the Legislative Council" by the Second Schedule ibid.

(4) Substituted for the word "approves" by paragraph 5 (2) ibid.

⁽¹⁾ The definition of "trustee" in the Act cannot embrace persons who are purporting to act as trustees in fraud of the rights of the lawful trustees. Such a person cannot be deemed to be a "landholder" under the Madras Estates Land Act in respect of a lease of trust property made by him after the expiry of his right to be trustee and the lessee cannot as one being in possession as tenant under such a lease on 30th June, 1934, resist the claim for possession by the lawful trustee by asserting that he had obtained a permanent right of occupancy by reason of section 6 of the Madras Estates Land Act (I of 1908) as amended by the Madras Estates Land (Third Amendment Act), 1936. 57 L.W. 580=1944 M.W.N. 674= (1944) 2 M.L.J. 326 (F.B.).

S. 10: The Select Committee said :- "To the machinery of control provided in the original Bill we have by a majority decided to add a Central Board or Boards on the lines of the Charity Commissioners in England. A Board will essentially be an administrative body. The local committees formed under Act XX of 1863 have been left too much to themselves. Their work has suffered for want of guidance, control and co-ordination. Board that is proposed is intended to supply this want. It will also deal directly with the maths and excepted temples which have been exempted from committee control. It will hear appeals from the decisions of committee and exercise, like the Board of Revenue under Madras Regulation VII of 1817, general superintendence over all religious endowments (S. 18). We think that one Board for the whole Presidency will suffice at the beginning, but it is not unlikely that the volume of work which it will be in charge of will so grow that in the interests of efficient administration more Boards than one will soon become necessary, each having jurisdiction over a group of districts. The Bill makes provision for such a contingency."1

(1) See Report of Select Committee.

The following criticism on the provisions of this section contained in Mr. Ramachandra Rao's Minute of Dissent may be read with advantage:—

[&]quot;The Bill creates an entirely new body which is to exercise 'General Superintendence' of all religious endowments, and which is empowered 'to do all things which are reasonable and necessary to ensure that mutts and temples are properly maintained and that all religious endowments are properly administered and duly appropriated to the purposes for which they were found or exist. I am duly opposed to the creations of the creation of the crea tion of a central authority such as that proposed by my colleagues. The Bill as originally introduced created widespread alarm throughout the Presidency and its provisions have provoked a good deal of opposition and the provisions of the Bill as now amended by the creation of a Central Board of Commissioners will further accentuate this feeling. The success of a legislative measure such as this very much depends upon the extent to which the community as a whole would accept its provisions as necessary and desirable. In the matter of the control of religious endowments it would be a sound legislative policy to feel one's way and go about cautiously at first and to gradually develop the machinery of control in the light of experience. It is therefore neither necessary nor desirable to put forward comprehensive legislative measure and to attempt heroic remedies from the outset for bringing these institutions under control. From this point of view, I am in general agreement with those portions of the Bill that aim at securing a correct register of endowments, the maintenance of proper accounts, an independent audit and an efficient system of local control over religious endowments than has hitherto existed. The necessity at present for the establishment of a central authority such as that proposed has not been established and such a Board with the extensive jurisdiction and powers proposed to be conferred on it is likely at the present stage to do more harm The inevitable tendency of all central authorities like the Board of Commissioners is to develop their own control at the expense and to the detriment of local control and, in a matter such as this it is far more import-

Jurisdiction of Commissioners.—All charities founded and endowed within the presidency are within the jurisdiction of the

ant that efficient local control should be developed rather than that control should be exercised by a body of Commissioners from Madras. Another equally important reason against the proposal is that a Board of Commissioners exercising their function from Madras would be a very costly undertaking. The President and the four Commissioners and their office establishments are likely to cost at least a lakh of rupees per annum and if the Board has to exercise their duties efficiently they should have inspectors to go round the Presidency in exercise of the general superintendence vested in them. In fact, one of the enthusiastic exponents of this proposal who gave evidence before the Committee was driven to admit that a General Board such as that proposed in the Bill would cost two to three lakhs of rupees per annum. This amount has to be found from the mutts and temples.

"In paragraph 8 of the report my colleagues justify the creation of a Central Board on the ground that the Committee constituted under Act XX of 1863 have been left too much to themselves and that their work suffered for want of guidance, control and co-ordination and that the proposed Board is intended to supply this want. I do not agree at all with this view. I think the guidance, control, and co-ordination that is required and that is likely to prove more efficient and less costly and more judicial in its character is that of the Court in the district as defined in the Bill. Instead of having one central authority in Madras it is certainly more desirable to place these District Committees under the guidance and control of the District Court in each district. This will be much more effective control than that of a Central Board. * * The prohibitive cost of this new machinery of administration provided in the Bill is in my opinion such as to make it distinetly unpopular with the communities affected by the Bill. provisions of Chapter VIII mutts and temples have to make annual contributions to the Board and the Committees. They have to pay the charges for auditing their accounts and all costs and expenses incurred in connexion with the legal proceedings initiated by a Board or Committee and the Courtfees leviable under Schedule II will have to be paid in most cases out of the funds of the endowments. It seems to me that the cumulative effect of all these provisions apart from all others is likely to make the administration of the endowments under this Bill unacceptable on the ground of cost. This measure aims for the first time at bringing the religious endowments in this Presidency under effective control and it would be wise to avoid as much as possible giving room to any criticism that the funds of the temples and mutts are to be used for the maintenance of a costly machinery, the necessity for which has not been fully established."—See Minutes of Dissent by Messrs. Ramachandra Rao and Govinda Raghava Iyer as members of the Select Committee.

"Another objection is that the exact scope and nature of the functions of the Central Board have not been carefully considered. The Central Board would not be merely an administrative body. The Board will have the power to frame schemes for mutts and excepted temples, to hold inquiries into the mismanagement of endowments, to frame schemes for non-excepted temples, to hear various appeals from the Committees. I have no doubt that in the exercise of these different functions the Board will have to take evidence, to call for records and to compel the attendance of witnesses and parties. If it is to discharge its functions efficiently it must have the same powers as a "Court" under the Indian Evidence Act of 1872, and the Board should also

Commissioners although their revenues are applied abroad1 and so are charities the endowments of which are abroad, but the income of which is applicable in this presidency.2

Powers of Charity Commissioners in England-Charitable Trusts Acts, 1853-1894.—The powers exercised by the English Charity Commissioners in relation to charities are derived mainly from the Charitable Trusts Acts, 1853 to 1894. One of the objects of these Acts is to protect property belonging to charities against loss, and to provide a simple and economical way of carrying out the charitable intentions of founders where such intentions are inadequately expressed in the instruments of foundation.3

The powers of the Commissioners are, on the one hand, of an inquisitorial and administrative nature and, on the other, of a judicial character, similar to those exercised by the courts.5

Construction of Acts, as to jurisdiction of Commissioners .-The Charitable Trusts Acts are so construed by the Courts as to further rather than to restrict the jurisdiction vested by them in the Commissioners.6

The Charity Commissioners exercise jurisdiction over all religious foundations or institutions in the country which are endowed and are not expressly exempted from the operation of the Act. 8

The Jurisdiction of the Commissioner extends over endowments which are not perpetual, as where the trustees have power

have the power of administering oath under the Indian Oaths Act, 1873. No such provision has been made in the Bill and I believe that the Board as constituted under the Bill would be an ineffective body." (Mr. Ramachandra

Rao's Minute of Dissent) .

"The Bill also seeks to invest the orders of the Board with finality in many matters. This is not desirable. I believe that in at least the orders of the Board which affect vested rights the parties concerned should have the right to resort to the ordinary Courts with appropriate safeguards against the frivolous use of the power as may be found necessary." (Ibid.)

(1) In re Duncan, L.R. 2 Ch. App. 356 (1844).

(2) Iron-mongers' Co. v. Attorney-General, 10 Cl. & F. 908; Chilcott,

p. 132. (3) See Twenty-ninth Report of the English Charity Commissioners Appendix, p. 21.

(4) Conferred by the Charitable Trusts Acts of 1853 (16 & 17 Vict.

- c. 137) and 1855 (18 & 19 Vict. c. 124).
 (5) Conferred by the Charitable Trusts Act 1860 (23 & 24, Vict. c. 136).
- (6) Re Duncan, (1867) L.R. 2 Ch. App. 356, 359. See also Re Meyricke, (1872), 7 Ch. App. 505, 506. (7) An "endowed foundation" is, it is conceived, a foundation having

an endowment within the meaning of the Act.

(8) Sec Charitable Trusts Amendment Act, 1855, S. 48. The list of exempted charities is contained in S. 62 of the Act of 1853. See also Halsbury's Laws of England, Vol. IV, p. 303.

to spend the corpus,1 or where the endowment is revocable2 and also over all charities founded and endowed in the country, the revenues of which are applied abroad3 and over all charities the endowments of which are abroad, but the proceeds of which are applicable in this country.4

Charities vested in Corporations.—The jurisdiction of the Commissioners is also exercisable over charities vested in corporations who, either solely or jointly with any other person or persons, are the recipients of the benefits and over charities whose trustees are municipal corporations or trustees appointed in their places.6

A charity does not become exempt from the jurisdiction of the

Commissioners by being registered as a limited company.7

Commissioners concerned with capital, not income. - The Commissioners are concerned with all dealings with capital of charities, as well as all variations of the prescribed mode of giving effect to the objects of a charity.8

They are in no sense administrators of income, which must be dealt with by the trustees within the limits prescribed by the founder, or according to duly authorised variations.9

Jurisdiction once invoked, cannot be terminated.—The jurisdiction of the Commissioners, once brought into operation by an application, cannot be put an end to by withdrawal of the application before an order has been made. 10

Enforcement of orders of Commissioners in England.—Persons not complying with requisitions or orders of the Commissioners

⁽¹⁾ Re Gilchrist Educational Trust, (1895), 1 Ch. 371.

⁽²⁾ Re Peel's School (Sir Robert) at Tamworth, (1868) 3 Ch. App.

⁽³⁾ Re Duncan, (1867) L.R. 2 Ch. App. 356: 36 L.J. (Ch.) 513.

⁽⁴⁾ Re Duncan, (1867), 2 Ch. App. 356; See also A. G. v. Gibson, (1835) 2 Beav. 317; Iron-mongers' Co. v. Attorney-General, (1844) 10 Cl. & Fin. 908, H.L.

Charitable Trusts Act, 1860, S. 10.

⁽⁶⁾ Municipal Corporations Act, 1882, S. 133.
(7) The contrary was argued In Re Church Army, but Cozens Hardy,
L.J. intimated at p. 474 without expressly deciding the point, that it was impossible to evade jurisdiction of the Commissioners by such means; see also Re Society for Training Teachers of the Deaf and Whittle's Contract, (1907) 2 Ch. 492, 493, where Neville, J., assumes that a charity is not less within the Charitable Trusts Acts because it is limited company.

⁽⁸⁾ See Twenty-ninth Report of the Charity Commissioners.
(9) Re Campden Charities, (1881) 18 Ch.D. 310, C.A.
(10) Re Poor's Lands Charity, Bethnal Green, (1891) 3 Ch. 400. An application for a scheme to regulate part only of a charitable trust, e.g., a particular legacy, would not, it is conceived, give the Commissioners jurisdiction to settle a scheme for the regulation of the entire charity against the wishes of the trustees. See Halsbury, Vol. I, p. 303:

made under the Charitable Trusts Acts are guilty of contempt of Court, and may be attached or committed.

Unendowed charities.—Unendowed charities are not subject to the jurisdiction of the Commissioners.2

Institutions wholly maintained by voluntary contributions.—In England, the jurisdiction of Charity Commissioners does not extend to any institution, establishment, or society for religious or other charitable purposes wholly maintained by voluntary contributions.8

A charity "wholly maintained by voluntary contributions" is one which has no invested endowment yielding an income for its support, but is dependent on the gifts of the benevolent, whether recurrent or occasional and whether inter vivos or by will.4

If the trustees of a charity wholly maintained by voluntary contributions invest, or retain the investments of, some part of such contributions, the charity is then treated as having an income producing endowment, and accordingly is no longer a charity supported wholly by voluntary contributions.5

Burden of proof as to exemption from jurisdiction .- The onus of proving that a particular charity is exempt from the jurisdiction lies on the party claiming the exemption.6

Local Government .- The vast powers conferred on the Local Government under this section and other sections of the Act have been the subject of much well directed criticism by competent writers.7

Charitable Trusts Amendment Act, 1855 (18 & 19, Vict. c. 136),
 S. 9; see also Charitable Trusts Act, 1883 (46 & 47 Vict. c. 137) S. 14.
 (2) Royal Society of London, and Thompson, (1881) 17 Ch.D. 407;
 Finnis and Young to Forbes and Pochim, (No. 2) 1883, 24 Ch.D. 591.

⁽³⁾ Halsbury, Vol. IV, p. 305. (4) Re Clergy Orphan Corporation, (1894) 3 Ch. 150. (5) See Re Clergy Orphan Corporation, (1894) 3 Ch. 145, 151, C.A. overruling Sons of the Clergy Corporation v. Sutton, (1860) 27 Beav.; 665; Royal Society and Thompson, (1881) 17 Ch.D. 407; and Finnis and Young to Forbes and Pochin (No. 2), (1883) 24 Ch. 4. 591.

⁽⁶⁾ Re Clergy Orphan Corporation, (1894) 3 Ch. 145 at p. 154; Re Gilchrist Educational Trust, (1895) 1 Ch. 370.

⁽⁷⁾ Powers of the Local Government under the Act .- "In the earlier stage of responsible Government nothing is more important than to give ample scope for the growth of healthy traditions and conventions. It will not be gainsaid that care has to be taken to see that the ordinary routine and regular machinery of Govrnment is not made an engine of regular oppression by the party in power or is not made the means of perpetuating its power. We know from our actual experience that the Local Government machinery in the rural areas is used for electioneering purposes and for the purpose of stereotyping of what was originally intended to be a flexible, elastic and responsible party Government. If we briefly survey the provisions of the Act, we see that at every stage the Local Government is made the

Voters' list.—Temple committee Election—Voters' list not revised Date of election not fixed by resolution—Infringement of rules—Validity of election. See 1927 M.W.N. 197.

Strength of the Board and its incorperation.

11. (1) A Board shall consist of a President and such number of other commissioners not being less than two nor more than four as the [Provincial Government] may fix.

(2) Every Board shall by such name as the [Provincial Government] may determine be a body corporate and shall have perpetual succession and a common seal and shall by the said name sue and be sued.

This section fixes the rule as to the strength of the Board and its constitution. It fixes the minimum strength of a Board at two and the maximum at four. (Report of Select Committee.)

Analogous Laws.—See S. 6 of the Madras District Municipalities Act (V of 1920) and S. 6 of the Madras Local Boards Act (XIV of 1920).

supreme arbiter of the destinies of an endowment. It can abolish Committees without assigning any reason; it can nominate its own men; it can newly constitute a Committee and put its own men on it. The right of election to a Committee is a precarious one under the Act; for at any time the Government can intervene and abolish an Elected Committee without assigning reasons. It introduces new heads of disqualification for Committeemembership. An ardent religious soul might be convicted for sedition and sentenced for a few months, but yet is ineligible for election or appointment as a member of a Committee, and the Local Government, which in this case means the Ministry or the party in power, is invested with the power to lax the disqualification in any particular case. The question is whether it is in the interests of sound Government a party in power, whichever might be the party, should be invested with plenary and arbitrary power of the kind above referred to, in a country seething with factions. I have no doubt that the answer of most reflective minds would be unhesitatingly "No." Again, one would expect that it is for the Legislature to say whether the Act shall apply to particular endowments or not. I can even conceive of power being vested in the Local Government to exempt a particular class of endowments after due enquiry. But, the Bill enables the Local Government to exempt a particular or specific endowment from the operation of the Act without assigning any reasons. Is this a privilege that ought to be accorded to the head of a party machinery? I am not putting the case too high in stating that there may be a tendency on the part of a candidate for election to make an electioneering promise that if he is elected or if a particular party is returned to power, he or the party will see to the exemption of particular endowments from the operation of the Act.'' See 51 M.L.J. (Journal), pp. 42 & 43. Where a valid notification had been issued for the constitution of the Religious Endowment Board under the Act I of 1925 a fresh notification under S. 10 of Act II of 1927 is not necessary. 28 L. W. 535; 1928 Mad. 1272: 55 M.L.J. 605.

Qualifications of commissioners and their appointment.

12. (1) The Commissioners of a Board shall be persons professing the Hindu religion.

- (2) The President shall be-
- (a) a barrister of England or Ireland or a member of the Faculty of Advocates in Scotland of not less than five years' standing; or
- (b) a person having held judicial office not inferior to that of a subordinate judge or of a judge of a small cause court, or
- (c) a person having been a pleader for a period of not less than ten years.
- (3) Subject to the provisions of sub-sections (1) and (2), the President and other commissioners of a Board shall be appointed by the [Provincial Government] and shall, during their term of office, be deemed to be public—servants within the meaning of section 21 of the Indian Penal Code.

The Select Committee said:—"It is essential that every Commissioner should be a Hindu by religion." The Select Committee decided by a large majority that the power of appointing the Commissioner should be vested in the Government. The Select Committee have prescribed for the President of the Board qualifications which should secure the services of a trained lawyer or judge for an appointment in which such training and experience are indispensable.¹

Tenure of office of commissioners.

13. (1) Every commissioner of a Board other than the President shall be entitled to hold office for five years from the date of his appointment.

(2) The President shall be entitled to hold office for five years from the date of his appointment:

Provided that if on the date of his appointment as President he is a commissioner he shall be entitled to hold office as President only up to the expiry of his term as commissioner.

⁽¹⁾ Sec Report of Select Committee. One of the powers conferred on the Board is that of making bye-laws under S. 19, and a trained lawyer would be the most competent person to Judge as to the limits within which and the extent to which these powers can be validly exercised. See the Judgment of Napier, J., in Sundara Rama v. Anantha Krishna, 38 I.O. 695 at p. 699: 5 L.W. 672.

- (3) An outgoing President or commissioner shall, if otherwise qualified, be eligible for reappointment.
- [(4) Notwithstanding anything contained in sub-sections (1) and (2), a person appointed to act in the place of the President or a Commissioner who has been granted leave, shall be entitled to hold office as President or Commissioner only during the continuance of the vacancy or for such shorter period as may be fixed by the Provincial Government.] (Added by Madras Act X of 1946).
- 14. (1) Every commissioner shall devote his whole time and attention to the duties of his office and shall not, without the sanction of the [Provincial Government], engage in any other profession, trade or business, or stand for election or be appointed as a member of a local body or be a trustee of any religious endowment.

(2) The commissioners shall each receive, out of the funds of the Board, such salary as the [Provincial Government]

may fix:

Provided that such salary shall not exceed one thousand two hundred rupees per mensem for a President or eight hundred rupees per mensem for any other commissioner.

[(3) The President and Commissioners shall be exempt from serving as jurors.] (Added by Madras Act X of 1946.)

The Select Committee said:-

"We consider that, if the Board is to function efficiently, it should consist of paid Commissioners and that their salaries should be attractive enough for competent men. We have accordingly fixed a maximum salary of Rs. 1,200 for the President and of Rs. 800 for other Commissioners." (Report of Select Committee.)

Power of Government to remove commissioners and their disqualification.

15. (1) The [Provincial Government] may suspend or remove any commissioner from his office—

(a) if he is convicted by a criminal court of any offence which in the opinion of the [Provincial Government] involves moral turpitude;

(b) if he becomes of insound mind, or a deaf-mute or

suffers from contagious leprosy;

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- (c) if he applies to be adjudicated or is adjudicated a bankrupt or insolvent;
 - (d) for corruption, misconduct or other sufficient cause.
- (2) A commissioner shall cease to hold his office if he ceases to profess the Hindu religion.

Analogous law:—For analogous provisions of other Acts, see S. 55 of the Madras Local Boards Act, XIV of 1920, and S. 49 of the District Municipalities Act V of 1920.

Office and meetings of the Board.

Office and meetings of the Board.

Office and meetings an office at such place as the [Provincial Government] may fix for the transaction of business.

- (2) At meetings of the Board, the President of the Board and in his absence the senior commissioner in order of appointment shall preside.
- (3) No business shall be transacted at any meeting unless at least two commissioners are present.
- (4) In case of difference of opinion among the commissioners, the question before the Board shall be decided by a majority of votes; and where the votes are equally divided the President or senior member presiding shall have a second or casting vote.

Officers and servants of the Board, their appointment and punishment.

17. Subject to [any rules made under this Act]¹

- (a) a Board may from time to time determine the number, designations, grades and scales of salary or other remuneration of its officers and servants, [* *]¹
- (b) the President of the Board shall have the power to appoint and transfer such officers and servants and may fine, reduce, suspend, remove or dismiss them for breach of rules or discipline, for carelessness, unfitness, neglect of duty or misconduct or other sufficient cause.

⁽¹⁾ Substituted, omitted and cl. (c) added by Madras Act V of 1944.

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- [(c) the President of the Board may delegate any of his powers under clause (b) to any Commissioner, Assistant Commissioner or officer of the Board, in any case or class of cases, subject to such exceptions, limitations and conditions if any as may be specified in the order of delegation] (Clause (c) added by Madras Act, V of 1944.)
- Powers and duties of the Board in general.

 18. Subject to the provisions of this Act and of any scheme settled or deemed to be a scheme settled under this Act,
- (1) the general superintendence of all religious endowments within the territorial jurisdiction of a Board shall vest in such Board, and
- (2) the Board may do all things which are reasonable and necessary to ensure that maths and temples are properly maintained and that all religious endowments are properly administered and duly appropriated to the purposes for which they were founded or exist.
- ¹[Explanation.—The general powers of superintendence of the Board shall include the power to pass such interim orders as it deems necessary in the interests of the proper maintenance of a math or temple or the administration of a religious endowment.]
- N.B.—The explanation to this section has been added by Act IV of 1930. The reasons for the addition of this explanation has been stated as follows:—

"Several matters including complaints about mismanagement come up before the Board both on the administrative and judicial sides of its work. Very often temporary arrangements have to be made for the management of the affairs of temples or maths pending disposal of the matters under investigation and action has to be taken under section 18. To make it clear that the Board can do so under it, the addition of an explanation is proposed".—
(Statement of Objects and Reasons).

Scope of Section.—The powers of superintendence conferred by this section is subject to the provisions of this Act and of Schemes, settled or deemed to be settled under this Act. Therefore, where a Scheme provides specifically for any purpose regarding the management of the affairs of an endowment, to that extent, the powers conferred by this Act on the Board and the Com-

⁽¹⁾ Explanation added by S. 5, Madras Act IV of 1930.

mittee do not come into operation. It is only such powers which are not in conflict with the provisions of such schemes that can be exercised by the Board under this section. The language of this section is very wide, and unless the Board chooses to respect the proper sphere of the Trustee's jurisdiction, it might practically become the trustee, and the trustee's individuality and liberty will be lost by unnecessary interference by the Board even in matters of internal administration of the endowments.¹

Although, by S. 18 the Board is given power of general superintendence and has power, by virtue of that section, to settle questions relating to the allocation of honours in religious institutions, the Board acts in settling such questions in its administrative capacity only. The Board's decision in such a matter does not either declare any one's legal right or deprive any one of any legal right which he has. There can therefore be no issue of a writ of certiorari in such a matter. A question relating to the distribution of theertham or other temple honours cannot be made the subject-matter of a suit, as it is not a question which affects a legal right. I.L.R. (1939) Mad. 904—49 L.W. 632—A.I.R. 1939 Mad. 511—(1939) 1 M.L.J. 901. See also (1937) 1 M.L.J. 442; 1937 Mad. 842—(1937) 2 M.L.J. 358. (Alienation by one of several trustees).

(2) PROCEDURE.—The Commissioners of the Endowments Board proceeded under Ss. 18 and 57 on the assumption that A was not the hereditary trustee of the temple, examined a few witnesses and then framed a scheme without making clear the case against him. There was no place for him in the Board of management. A filed a suit as contemplated by S. 57 for setting aside the scheme and also a petition under S. 84 (2) of the Act. In the petition the Court granted a declaration in his favour that he was the hereditary trustee and the suit temple was an excepted one. In the suit the Court decided that the scheme framed by the Court was not ultra vires and no case was made out for disturbing it. The Board filed no revision petition to the High Court, against the order in the original petition.

⁽¹⁾ The following remarks of Mr. Govinda Raghava Iyer in his Minute of Dissent as member of the Select Committee on the provisions of this section may also be referred to with advantage.—"The revised Bill makes provision for the institution of a Board of Commissioners. Their functions according to the Bill are largely of a judicial character rather than administrative, if not even more of a judicial character than administrative, Before the Board of Charity Commissioners were established in England, a long and protracted inquiry was undertaken by Commissions instituted for the purpose who made 32 reports on the strength of which a Select Committee of the House of Commons and later on, i.e., in 1849 a Royal Commission were appointed to make recommendations. It was these recommendations that were eventually embodied in the Charitable Trusts Act of 1853. It has also to be noted that the powers of the Commissioners both under the original Act and the later amendments were not anything so wide or exclusive as under the Bill as revised by the Select Committee."—Minute of Dissent by Mr. Govinda Raghava Iyer.

English Law.—This section provides for a general and residuary power of superintendence in the Board in respect of the work done by Committees and Trustees. But, we find, that more detailed provisions are made under the corresponding sections of the English Charitable Trusts Act with regard to the powers of the Charity Commissioners and the mode in which they may be exercised. It is hoped that the Commissioners in exercising their powers under this section will be guided by the precedents set up under the corresponding sections of the English Charitable Trusts Act.

the other hand A filed an appeal against the decision of the lower Court in the suit. Held, that the procedure adopted by the Commissioners was wrong and the trustee A was prejudiced by such procedure. What is contemplated in S. 62 of the Act is that opportunity should be given to the trustee to hear what the case against him is and then the Board may proceed to consider whether a case for the settlement of a scheme has been made out. The inquiry under S. 62 should be more detailed and thorough than what is required under S. 57. (54 Mad. 532 and 68 M.L.J. 722=58 Mad. 862, Ref. to.) 48 L.W. 793=(1938) M.W.N. 1211=A.I.R. 1939 Mad. 208=(1938) 2 M.L.J. 987.

TEMPLE-BOARD STARTING EXCEPTED SCHEME PROCEEDINGS MOTU-APPOINTMENT OF RECEIVER PENDING FINAL ORDERS-LEGALITY .- The Hindu Religious Endowments Board, Madras, started suo motu proceedings under S. 62 of the Act to frame a scheme for a temple which was an excepted temple according to the amended definition of Act IV of 1930. While the draft scheme was pending consideration by the trustees, the Board, purporting to act under S. 18 of Act II of 1927, appointed an interim receiver of the temple for realising the collections and offerings during Fridays in the month of Adi, with a view to ascertain the correct income derived by the temple during the Adi Fridays. Held, that the order appointing a receiver was ultra vires, as the Board had no such powers of interference with the trustees of excepted temples, and that the general principle "that where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employing such means as are essentially necessary to its execution", cannot override the more particular provisions of the Act which defines the powers. Held, further, that even if no actual relief is possible because the period during which the collections were to be made was already past, the matter was one of such importance, and the order a serious infringement of the rights of the trustees that the case was a proper one in which the High Court should exercise its right of certiorari, and the order appointing receiver should be set aside as being in excess of the Board's 41 L.W. 199: 1935 M.W.N. 127: 68 M.L.J. 178. jurisdiction.

The following are examples of action taken by the Board under the

powers was conferred by this section:-

temple at Nandyal (Kurnool District) by the Nawab of Banganapallee and party during their shooting campaign came to the notice of the Board. Thereupon the Potilical Agent of Banganapallee State was addressed to take early action. The matter finally ended in a compromise, the Nawab paying Rs. 500 towards the expenses of the purification ceremony. The Board was thus able to avert consequences detrimental to the temple, communal misunderstandings and resentment of the Hindu worshippers."—(First Report of the Religious Endowments Board, page 16).

Powers of Commissioners in England—Inquisitorial.—Under the English Law, the Charity Commissioners may, acting personally or through Assistant Commissioners, inquire into the condition and management of all charities which are not expressly exempted from their jurisdiction.²

Accounts and inquiries.—For this purpose they may require accounts, statements, and written answers to inquiries, verified by oath or otherwise, to be furnished by the following persons, namely, (1) trustees or persons acting or concerned in the management or administration of such charities, (2) agents of any such trustees or persons, (3) depositaries of any funds or moneys of such charities, (4) beneficial recipients of any funds of a charity or of any income therefrom, and (5) persons having the possession or control of any documents concerning a charity or its property.³

Examination on oath.—Such person may also be required to attend, within a radius of ten miles from their place of abode, before the Commissioners for examination on oath or otherwise, and to bring and produce documents in their custody relating to the charity.⁴

Copies and extracts of documents.—The Commissioners may require officers having the custody of enrolments, decrees, reports, records and other documents relating to any charity to furnish copies or extracts to them, and may examine registers and records of the Courts, public registers, and offices of records and take copies and extracts therefrom.⁵

Transmission of documents for examination.—The Commissioners may also require documents belonging solely to a charity to be transmitted to them at the office of the Commission for examination.

[&]quot;The Board moved the Rameswaram Devasthanam Committee to stop the levy of an iniquitous poll-tax was being collected from the Malayali pilgrims attending the Rameswaram temple, as also the levy of Re. 1 from every Brahman entering the Arthamantapam of the said temple."—(First Report of the Religious Endowments Board, page 16).

⁽¹⁾ See Charitable Trusts Act, 1887, S. 2: Assistant Commissioners were formerly called "Inspectors."

⁽²⁾ Charitable Trusts Act, 1853, Ss. 9 & 19. As to what charities are within the jurisdiction of the Commissioners, see Halsbury, Vol. IV, pp. 303 and 304. Councils of Counties or County boroughs are authorised to contribute out of the County Funds or Borough Funds or rates to expenses of inquiries conducted by the Charity Commissioners into Charities affecting such Counties or County boroughs (Charity Inquiries Expenses Act, 1892).

⁽³⁾ Charitable Trusts Act, 1853, S. 10: Charitable Trusts Amendment Act, 1855, S. 6.

⁽⁴⁾ Charitable Trusts Act, 1853, S. 12: Charitable Trusts Amendment Act, 1855, S. 7.

⁽⁵⁾ Charitable Trusts Act, 1853, S. 11.(6) Charitable Trusts Act, 1860.S. 19.

Under the English Law, power is given to the Commissioners or any Commissioner acting under authority of the Board, to require Trustees and Managers to attend and be examined. Power is also given to the Commissioners to require transmission of documents belong to charities. 1

All the above-mentioned requisitions must be made by an order of the Board or by precept under the hand of the Commissioner or Assistant Commissioner making the same.²⁻³

False evidence.—Persons wilfully giving false evidence to the Commissioners are guilty of perjury.4

Refusal of information, etc.—Persons improperly refusing or neglecting to render accounts or statements, or to make answers to inquiries by the Commissioners, or to attend before them or give evidence, or altering, destroying, with-holding, or refusing to produce documents, are guilty of contempt of Court, and may be attached and committed.⁵

Persons making claims adverse to the charity.—The Commissioners have no power to require any information or the production of any document relating to a charity from any persons holding or claiming to hold any property adversely to any charity or free from any charitable trust⁶ though they may procure information elsewhere if they can.

The mere setting up of an adverse claim is not sufficient to oust the jurisdiction of the Commissioners. It is for the Court to decide whether such a claim is well-founded.

Administrative powers—Opinions or advice as to administration.—The Charity Commissioners may, if applied to by the trustees or other persons concerned in the administration of a charity, give

⁽¹⁾ See the English Charitable Trusts Act (1855), Ss. 7 and 19; Chilcott, p. 36.

⁽²⁻³⁾ Charitable Trusts Amendment Act (1855), S. 8; Charitable Trusts Act, 1887, S. 2.

⁽⁴⁾ Charitable Trusts Act, 1853, S. 13.

⁽⁵⁾ Charitable Trusts Act, 1853, S. 15; Charitable Trusts Amendment Act 1855, S. 9. For an example of a motion by the Charity Commissioners to issue a writ of attachment against Charity Trustees for neglecting to deliver accounts, see Re Gilchrist Education Trust, (1895) 1 Ch. 367 (373), where a form of order is given.

⁽⁶⁾ Charitable Trusts Act, 1853, S. 15; Charitable Trusts Amendment Act, 1855, S. 6.

⁽⁷⁾ Re Peel's (Sir Robert) School at Tamworth, (1868) 3 Ch. App. 543 (550.)

their opinion, advice or direction1 respecting the administration of such charity property, or any question or dispute relating thereto.1-a

By virtue of section 16 of the English Charitable Trusts Act (1853) the "opinion or advice" of the Commissioners respecting a charity, its management or administration, given to any trustee or other person concerned in the management or administration of such charity, has, so far as the applicant is concerned, a judicial Such opinion or advice is to be in writing signed by the Commissioners and sealed with their seal.2

Any person acting in accordance with the advice or opinion of the Commissioners is indemnified against all liability, unless advice or opinion has been obtained fraudulently or by wilful concealment

or misrepresentation.3

By the Charitable Trusts Act of 1860, S. 2, certain administrative powers are given to the Commissioners, and they are authorised in certain cases to make such effectual orders as may be made by any Judge of the Chancery Division of the High Court of Justice, sitting in Chambers.4

Disputes among members.—Disputes among members of any charity exempted by this Act in relation to the management of the charity may be referred to the arbitration of the Commissioners.5

Reference of disputes to arbitration of Commissioners .-Any question or dispute among the members of any charity, whether exempted or not from the operation of the Charitable Trusts Acts6 in relation to any office or the fitness or disqualification of any trustee or officer, or his election or removal, or generally in relation to the management of the charity, may be referred to the arbitration of the Commissioners, whose decision will be final, and may be made a rule of Court.7

Contentious cases.—The Commissioners may, but are not bound to, exercise jurisdiction in cases of a contentious character.8 The Court will not interfere with the discretion of the Commissioners except in cases of gross and palpable miscarriage of justice.9

(3) Charitable Trusts Act, 1853, S. 16. For a form of application to the Charity Commissioners under this section, see Encyclopaedia of Forms, Vol. III, p. 468.

(4) Chilcott's Charities, p. 37. (5) Charitable Trusts Act (1853), Ss. 62 and 64.

(6) Charitable Trusts Amendment Act, 1855, S. 46. (7) Charitable Trusts Act, 1853, S. 64. (8) Charitable Trusts Act, 1860, S. 5.

⁽¹⁾ A formal orders or certificate signed by two or more of the Commissioners and sealed with their seal is necessary. Charitable Trusts Act, 1853, S. 16. Thomas v. Harford, (1883) 48 L.T. 262 and see A. G. v. Hughes, (1889) 81 L.T. 679.
(1-a) Halsbury, Vol. IV, p. 310.
(2) Chileott, p. 19.

⁽⁹⁾ Re Hackney Charities, (1865) 4 De. G.J. & Sm. 588 (592).

Alteration of scheme by Court .- The Court has jurisdiction in an action to alter a scheme which was originally settled on petition.1

Compromises .- Questions relating to charities may be compromised and the terms of the compromise confirmed by the Court.2 The Charity Commissioners also may sanction a compromise of claims on behalf of3 or against4 a charity without taking or con-

tinuing any proceedings at law or in equity.5

Appeal.—By virtue of the English Charitable Trusts Act, 1860, S. 8, and 1869, S. 10 the orders of the Board are subject to an appeal to the Chancery Division, but such appeal can only be made by the Attorney-General, or some person authorised by him or by the Board, and a further appeal will lie to the Court of Appeal; but the Court will refuse to interfere with the exercise of the Commissioners' discretion unless a strong case of mistake or miscarriage of justice is made out.6

18-A. (1) Subject to such control as may be prescribed,

Power of President to constitute territorial assign divisions and functions.

the President of a Board may divide the area within its jurisdiction into territorial divisions, and assign, subject to the provisions of sub-section (2) and the other provisions of this Act, the powers and. duties vested in Board by or under this Act

in respect of all the institutions situated in each of such divisions, to himself or to some other Commissioner.

(2) Subject to control as aforesaid the President may also assign to himself or to some other Commissioner, either in addition to powers and duties in respect of a territorial division assigned under sub-section (1) or in lieu thereof-

(a) the powers and duties vested in the Board by or under this Act in respect of any class or group of institutions or of any

institution, or

(b) any power or duty so vested in respect of all institutions or any class or group thereof.

(3) Subject to control as aforesaid the President may vary the limits of, or cancel, any territorial division made under

(4) Charitable Trusts Amendment Act, 1855, S. 31. (5) See Halsbury's Laws of England, Vol. IV, p. 313.

⁽¹⁾ A. G. v. Stamford (Earl), (1839) 1 Ph. 737=10 L.J. (Ch.) 58. (2) A. G. v. Lauderfield, (1743) 9 Mod. Rep. 287. (3) Charitable Trusts Act, 1853, S. 23.

⁽⁶⁾ See In re Burnham National Schools, Ex parte Bates, (1874) L. R. 17 Eq. 241=43 L.J.N.S. Ch. 340=22 W.R. 198; Tudor, 3rd ed. p. 101; In re Campden's Charities, (1881) 18 Ch.D. 310.

sub-section (1), or vary or cancel any assignment of powers and duties made under that sub-section or under sub-section (2).] (Inserted by Madras Act V of 1944.)

President to be administrative head of Sh Board and to have power to transfer proceedings and call for an records.

- [18-B. The President of a Board shall, subject to the provisions of this Act, be its administrative head for all purposes, and may for reasons to be recorded in writing—
- (a) at any stage, transfer any proceeding-
- (i) from one Commissioner to another, from himself to any other Commissioner, or from any other Commissioner to himself, or
- (ii) from one committee of the Board to another committee thereof;
- (b) call for any records connected with any administrative matter, that is to say, any matter not being of a judicial or quasijudicial nature, disposed of by any other Commissioner, within three months from the date of disposal and direct that the matter shall be reconsidered by a committee of the Board or by the full Board.

Explanation.—Any matter in respect of which a suit or application to the Court is not provided for in this Act shall, for the purposes of clause (b), be deemed to be an administrative matter. [(Inserted by Madras Act V of 1944).

Power of Board to make by-laws.

19. A Board may make by-laws not inconsistent with this Act or the rules made thereunder or with any other law as to—

[(a) the division of duties among the President and Commissioners of the Board;] (Omitted by Madras Act V of 1944.)

(b) the manner in which [the decision of the President and commissioners of the Board] shall be ascertained otherwies than at meetings;

(1) In sub-section (1) of section 19—

Clause (a) omitted; in clause (b), for the words "their decision" the words "the decision of the President and Commissioners of the Board" substituted.

- (c) the procedure and conduct of business at meetings of the Board;
- (d) the delegation of powers of the Board to individual commissioners or committees of commissioners [or to Assistant Commissioners;]¹
- (e) the security, if any, to be furnished by officers and servants of the Board;
- (f) the books and accounts to be kept at the office of the Board; [or of an Assistant Commissioner];
- (g) the custody and investment of the funds of the Board, 1[* *] and trustees;
- (h) the form and manner of applications to the Board;¹[or to Assistant Commissioners];
- (i) the details which shall be included in or excluded from the budgets of ¹[* * * *] religious endowments; ³[* * *]
- [(j) the persons by whom receipts may be granted for money paid to the Board;
- (k) the accounts, returns and reports to be submitted by trustees of religious endowments; [1] (clauses) (j) and (k) inserted by Act V of 1944);
- (1) generally the conduct of all proceedings and business under this Act.
- (2) No by-law or cancellation or alteration of a by-law made by the Board shall have effect until the same shall have

⁽¹⁾ In clause (d), after the words "committees of commissioners" the words "or to Assistant Commissioners" added;

in clause (f), after the words "of the Board" the words "or of an Assistant Commissioner" added;

in clause (g), the word "committees" omitted;

in clause (h), after he words "to the Board," the words "or to Assistant Commissioners" added;

in clause (i), the words "committee and" the word "and" occurring at the end omitted;

in clause (j), re-lettered as clause (l) and before the clause as so re-lettered clauses (j) and (k) newly inserted by Madras Act V of 1944.

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THE MADRAS RELIGIOUS ENDOWMENTS ACT. S. 21]

been published for public criticism and thereafter confirmed by the [Provincial Government].

(3) All by-laws when they shall have been duly confirmed shall be published in the [Official Gazette] and shall thereafter have the force of law.

Section 19.—As to the powers and limitations of the Board in making by-laws, see 5 L.W. 672=38 I.C. 695.

CHAPTER III

ASSISTANT COMMISSIONERS.

- (1) For the purpose of assisting a Board in exercising its powers and discharging its duties under this Act, there shall be appointed Appointment such number of Assistant Commissioners qualifications of Assisas the Provincial Government, after contant Commissioners. sulting the Board, may from time to time, deem necessary.
- (2) An Assistant Commissioner shall be a person professing the Hindu religion and possess such other qualifications as may be prescribed.
- (3) Appointment to the post of Assistant Commissioner shall be made by the Provincial Government after consulting the President of the Board.
- (4) Assistant Commissioners shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.
- 21. (1) An Assistant Commissioner shall have jurisdiction over such area as may be assigned to him by the President of the Board and Jurisdiction of Assisshall, subject to the provisions of subtant Commissioners. section (2), exercise such powers and discharge such duties therein as are or may be assigned to him

. by or under this Act.

(2) The Board may, by order in writing, declare that the exercise and discharge of all or any of the powers and duties

(1) Old Chapter III omitted and new Chapter III (Sections 20 to 28) inserted by Madras Act V of 1944.

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so assigned shall be subject to such exceptions, limitations and conditions as may be specified in the order; and may itself exercise or discharge any power or duty so excepted.

22. The Board may delegate to an Assistant Commissioner any of its powers and duties under Delegation of powers this Act subject to such limitations and and duties to Assistant conditions, if any, as may be specified in the Commissioners. order of delegation.

Duty of Assistant Commissioners to assist

Board.

23. Every

Assistant Commissioner shall assist the Board in any manner required by it; and in particular, it shall be his duty to conduct such inquiries and investigations, to take such evidence, to make such inspections,

and to furnish such reports, as may be directed by the Board from time to time in regard to any matter.

Transfer and with-drawal of proceedings pending before Assistant Commissioners.

24. The President of the Board may, at any stage, transfer any proceeding pending before an Assistant Commissioner for to any other Assistant Commissioner, or withdraw any proceeding so pending for disposal by the Board.

25. (1) The Board may, of its own motion or on the application of any person having interest, call for any records, proceedings or other powers of revision. documents or papers from any Assistant Commissioner, and examine the same for the purpose of satisfying itself as to the correctness, regularity or propriety of any order or proceeding passed or recorded by such Assistant Commissioner; and the Board may in its discretion modify, annul or reverse such order or proceeding, or remit the case to the same or another Assistant Commissioner for disposal.

(2) Pending the exercise of its power under sub-section (1), the Board may stay the execution of any order or proceeding passed or recorded by an Assistant Commissioner.

26 If the Board is satisfied that an Assistant Com-

Board's power in cases of default by Assistant Commissioners.

missioner has failed to exercise any power or discharge any duty which he ought to have exercised or discharged, the Board may itself exercise such power or discharge such duty.

27. Notwithstanding anything contained in this Act,

Board to exercise Assistant Commissioner's powers and discharge his duties in certain cases. where no Assistant Commissioner has been appointed for any area, or where the office of an Assistant Commissioner appointed for any area falls vacant, the Board may in such area exercise the powers and discharge the duties assigned by or under this

Act to an Assistant Commissioner, until an Assistant Commissioner is appointed or the vacancy is filled, as the case may be.

28. The provisions of this Act relating to appeals to the Board from the orders of an Assistant

Certain provisions of Act not to apply to orders and actions under sections 26 and 27. the Board from the orders of an Assistant Commissioner or to approval by the Board of his actions, shall not apply to any order passed or action taken by the Board in pursuance of section 26 or section 27.

[Sections 29 to 37 omitted by Madras Act V of 1944.]

CHAPTER IV.

RELIGIOUS ENDOWMENTS IN GENERAL.

Preparation of register of endowments. (1) For every math and temple a register shall be maintained by the Board showing—

- (a) the names of past and present trustees and particulars as to the custom, if any, regarding succession to the office of trustee;
- (b) particulars of all endowments of the math or temple, and all title-deeds and other documents relating thereto;
- (c) particulars of the scheme of administration and of the dittam or scale of expenditure;

- (d) the names of all offices to which any salary, emolument or perquisite is attached and the nature, time and conditions of service in each case;
- (e) the jewels, gold, silver, precious stones, all vessels and utensils and other movables belonging to the institution, with their estimated value; and
 - (f) such other particulars as the Board may fix.
- (2) The register shall be prepared, verified and signed by the trustee of the math or temple or by his authorized agent and submitted by him to the Board within such period after the commencement of this Act as the Board may fix:

Provided that a ¹[register relating to a math or temple over which an Assistant Commissioner has jurisdiction shall be submitted through the Assistant Commissioner who may] after making such inquiry as ¹[he] may consider necessary, recommend such alterations, omissions or additions in the register as ¹[he] may think fit.

- (3) The Board may, after receiving the register from a trustee, make such inquiry as it may consider necessary and direct that the register be approved with such alterations, omissions or additions as it thinks fit to order.
- (4) A copy of the register as approved by the Board shall be furnished to the trustee and to the ¹[Assistant Commissioner], if any, concerned.

Principle of Sections 38 and 39.—"Several committees do not maintain a proper register of the endowments over which they exercise jurisdiction and some of them are ignorant as to the properties comprising such endowments. It is also necessary that committees should be compelled to take interest in preparing and maintaining a record of the origin and history of the endowments committed to their care. Apart from the utility of such a record and register in facilitating the administrative work of committees and trustees, these endowments contain a lot of history which is worth the while of the committees to unearth and, if need be, to publish in accessible form." (Statement of Objects and Reasons).

The original Bill cast the duty on the committee of preparing a correct record of endowments. The Select Committee have con-

⁽¹⁾ Substituted by Madras Act V of 1944.

siderably elaborated this provision. The trustee is responsible for supplying information as regards all existing endowments of maths or temples, and this should be done within such time after the commencement of the Act as the Board will fix. The information supplied by the trustee will be checked by the committee, if any, and the Board will settle finally the contents of the register for each endowment. We have provided further that the register should be verified and brought up to date from year to year. The want of sufficient or accurate information regarding religious endowments is now a serious handicap to efficient control and Sections 38 and 39 are therefore considered to be of great importance.

- [N.B.—Madras Act V of 1944 has abolished Temple committees, and their functions now devolve on Assistant Commissioners.
- Annual verification of the register.

 Annual verification of the register.

 Annual verification and shall submit to the Board for its approval a verified statement showing the alterations, omissions or additions required therein.
- (2) The Board [or the Assistant Commissioners as the case may be]² may on receipt of the statement make such inquiry as they think necessary and the Board may by order direct the alterations, omissions or additions which should be made in the register.
- (3) A copy of the order under sub-section (2) shall be communicated to the trustee and the [Assistant Commissioner]² if any, concerned and he shall carry out the alterations, omissions or additions ordered by the Board in the copy of the register kept by him.

Application of sections 38 and 39° to specific endowments. 39-X. The provisions of sections 38 and 39 shall, so far as may be, apply to a specific endowment attached to a temple or math.] (Inserted by Madras Act X of 1946.)

⁽¹⁾ Report of Select Committee.

Note: -The Committees are now abolished and Assistant Commissioner are appointed in their stead.

⁽²⁾ Amendments in Ss. 38 and 39 and words within square brackets substituted by Act V of 1944.

40. (1) [Subject to the provisions of the Malabar Temple Entry Act, 1938] [and the Madras

Care required trustee and his powers. Temple Entry Authorization and Indemnity Act, 193972 the trustee of every religious endowment is bound to administer its

affairs and to apply the funds and properties of such endowment in accordance with the terms of the trust, the usage of the institution and all lawful directions which a competent authority may issue in respect thereof, and as carefully as a man of ordinary prudence would deal with such affairs, funds or properties if they were his own.

(2) A trustee shall, subject to the provisions of this Act, be entitled to exercise all powers incident to the provident and beneficial management of the religious endowment and to do all things necessary for the due performance of the duties imposed on him.

The Select Committee said:-"A general indication of the powers and duties of trustees of endowments is necessary. Subclause (1) contains the general principle enunciated in section 15 of the Indian Trusts Act. "3

Care required of trustee .- S. 15 of the Trusts Act provides as follows:- "A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal-with such property if it were his own; and, in the absence of a contract to the contrary a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.4

The first duty of a trustee is to acquaint himself with the terms of the trust under which he acts and with the state of the trust property6 and with the contents of all such deeds, notices, and other documents and papers relating to or affecting the trust property which has come into his possession or under his control.7

⁽¹⁾ Inserted by Madras Act XX of 1938.

⁽²⁾ Inserted by Madras Act XXII of 1939.(3) Report of Select Committee.

⁽⁴⁾ Trusts Act (II of 1882), S. 15, see 38 M. 71; 23 M.L.J. 599; 12 M.L.T. 530; (1912) M.W.N. 1237. Trusts Act II of 1882 which excluded Hindu Religious Endowments from the operation and scope of the Act, thereby predicates that Hindu endowments are not held in trust in its technical sense. Rangacharya v. Raman Acharya, A.I.R. 1928 All. 689.

(5) Hallows v. Lloyd, 39 Ch.D. 686; Hals., Vol. 28, pp. 117-124;

Lewin 321-332.

⁽⁶⁾ Harry v. Olliver, 57 L.T. 239. (7) Hallows v. Lloyd, 39 Ch.D. 686.

The trustee must take all reasonable and proper measures to obtain possession of the trust property if it is outstanding, and to get in all debts and funds due to the trust estate. He must preserve it and secure it from loss or risk of loss.

Whenever necessary, he must institute legal proceedings to effect its security or recovery^{3-a} and he should in proper cases, defend actions brought against him in respect of the trust property.⁴

He is not, however, bound with a view to recover trust property, to take proceedings which, from the financial position of the person liable to restore it or otherwise, would be clearly useless.⁵

A trustee must not connive or knowingly facilitate any act or conduct of another person which would involve a breach of trust or occasion risk or loss to the trust property.

A trustee must strictly conform to and carry out the terms of the trust so far as they are for the time being in force.

A trustee is bound to execute the trust with fidelity and reasonable diligence.

A trustee must not in any way make use of the trust property or of his position as trustee for his own interest or private advantage.

A trustee being personally responsible for the exercise of his judgment and for the performance of his duty, he cannot escape responsibility by leaving to another person the exercise of that judgment or the performance of that duty. 10

Trustee of temples will be acting contrary to their duty if they refuse to accept voluntary contributions offered by devotees for the performance of new puja or worship provided they are not inconsistent with the object of the institutions.¹¹

⁽¹⁾ Powell v. Evans, (1801) 5 Ves. 839.

⁽²⁾ Lowson v. Copeland, 2 Bro. C.C. 156.

⁽³⁾ Sutton v. Wilders, L.R. 12 Eq. 373.

⁽³⁻a) Lawson v. Copeland, 2 Bro.C.C. 156.

⁽⁴⁾ Benet v. Wyndham, 4 De. G. F. & J. 259, C.A.

⁽⁵⁾ Ward v. Ward, (1843), 2 H.L., Cas. 777-Per Lord Lyndhurst.

⁽⁶⁾ Head v. Gould, (1898) 2 Ch. 250.

⁽⁷⁾ Nickinson v. Cockill, 3 De. G. J. & Sm. 622.

⁽⁸⁾ Charitable Corporation v. Sutton, (1742) 2 Atk. 400. As to the circumstances when a trustee can deviate from the terms of the trust, see 28 Hals. 120.

⁽⁹⁾ Per Lord Eldon, L.C., in Ex parte Lacey, (1802) 6 Ves. 625.

⁽¹⁰⁾ A. G. v. Scott, 1 Ves. Sen. 413; 28 Hals. pp. 117-122.

^{(11&#}x27;2 L.W. 127.

41. The trustee of specific endowments made for the

Power of trustee of math or temple over trustees of specific endowments.

performance of any service or charity connected with a math or temple shall perform such service or charity subject to the general superintendence of the trustee of the math or temple and shall obey all lawful orders issued by him.

Scope of Section .- It is made clear that the trustees of specific endowments for the performance of a charity or service in a math or temple occupy a subordinate position to that of the general trustee of the math or temple.1

(1) Report of Select Committee.

The following well-directed criticism regarding the policy of the section, and the provisions thereof, by Mr. A. Krishnaswami Iyer in the course of an article in the 'Madras Law Journal' may most usefully be noticed:-

Kattalais and endowments for purposes of any service or charity connected therewith.- "The definition of religious endowment under the Act is comprehensive and takes in endowments for the performance of any service or charity connected therewith. It is a notorious fact that there are several institutions like choultries and Veda Patasalas founded by Nattukottai Chettis all over the country. In one sense, they are for the performance of charities connected with the temple, founded as adjuncts to particular temples and mutts. It is far from being clear whether it is the intention of the framers of the Bill to bring in these charities also under the definition of religious endowments. Again, service grants were prior to this enactment, treated by Courts on a footing different from the trust property of the temple. But the Bill assimilates the service grants with the trust of the temple and brings both under the definition of "religious endowments." So far as the southern part of this Presidency is concerned, a large part of the Kattalais and benefactions in public temples is traceable to the munifi-cence and religious devotion of the members of the Nattukottai Chetti com-munity and of other private donors. There have been very few instances of the misapplication of these special trusts, and there is absolutely no justification for bringing these special endowments under the jurisdiction of local committees, manned possibly by people who have not contributed anything substantial either to the temple foundation or any endowment connected therewith. The povisions are sure to give a set back to the munificence and philanthropy of a large number of people. From my intimate acquaintance with many of the leading members of the Nattukottai Chetti community, I can confidently say that they resent such an interference (51 M.L.J. 45-46).

"S. 41 provides that the trustee of a specific endowment is not merely subject to the general superintendence of the trustee (General Trustee) but that he shall obey all lawful orders issued by the General Trustee. There may be something to be said in favour of the co-ordination of the different functionaries of a temple, but that is no reason why the special trustee should be made a kind of subordinate to the General Trustee, simply because the special trustee's family seems to be charitably minded and has made large gifts to the temple. It is unnecessary to deal with the point that when once a temple is brought under a particular jurisdiction by reason of the General and Kattalai trustees.—The plaintiffs as managers of a Kattalai sued the temple trustee for recovery of a specific share of the tasdik amount received by the latter from Government for several years before suit, the same having been allotted for the purpose of the Kattalai. Held, (1) that there was nothing in the case to support the view that the trustee acted as agent of the Kattalai manager in so receiving the amount and (2) that it was reasonable to presume that the temple trustees were appointed trustees for the receipt of the Kattalai amount.

Even though a person is hereditarily entitled to perform a festival, the Dharmakarta may impose a condition on him, viz.. that it is open to him (the Dharmakarta) to receive contributions

definition all the special endowments are automatically brought under the same jurisdiction." 51 M.L.J. (Journal) 46.

(1) Tirumalai v. Rama Subbhaier, 8 M.L.T. 130 at p. 131; see also as to Kattalai trustees, 4 M.H.C. 2; 5 M.H.C. 48. Mutt and temple—Borrowing powers of—Distinction. There is no distinction in the matter of borrowing powers between the matathipathi of a mutt and the trustee of a temple. Venkatabalagurumurthi Chettiar v. Balakrishna Odayar, 1930 M.W.N. 925—32 L.W. 538.

Temple-purchase of provisions on credit—Cash available with trustees—Necessity—Liability of temple funds. In considering the question whether certain debts incurred by the trustees are supported by necessity, it has to be seen firstly, whether the debts were contracted by the trustee for his own purposes or for purposes of the temple and in discharge of the duties under which he lay in the performance of the worship and the feeding of pilgrims and secondly, whether the moneys so borrowed were legitimately applied for those purposes. So where a trustee ordered provisions for the temple and they were applied for temple purposes, the debt is a charge binding on the temple funds. (50 M. 497, followed). The fact that at the time the goods were purchased on credit, the trustees had sufficient cash in hand and that there was no financial necessity to resort to credit is not material to determine the binding nature of the debt. The borrowing should only be for temple necessity and not necessarily for financial necessity. (43 M.L.J. 147, Ref.) Venkatabalagurumurthi Chettiar v. Balakrishna Odayar, 1930 M.W.N. 925=32 L.W. 538.

If it is once proved that a debt is binding on the temple the creditor is entitled to enforce the payment of the same from temple funds and the circumstance that the temple authorities wrongfully delayed or withheld payment is no ground for not allowing the creditor to enforce his debt against the temple. The burden of proving the existence of such circumstances showing binding nature of the debt on temple is on the creditor. (11 I. A. 145 and 53 I.A. 253, Ref.) Packiria Pillai v. K. V. Subbiah Mudaliar, A.I.R. 1928 Mad. 1059.

If the trustees bind together to defeat the interest of the idol by fraud or by mutual consent, any decree obtained by them is not, and cannot be binding upon the idol. Rangacharya v. Raman Acharya, A.I.R. 1928 All. 689.

Suit for recovery of debt contracted by shebait, Frame of—Administration suit, see 52 Bom. 431=A.I.R. 1928 Bom. 183.

from others to perform the festival on a grander scale than that person is really able to do.1

42. (1) When a vacancy occurs in the office of hereditary trustee of a religious endowment and there is a dispute respecting the right of succession to such office, or

when such vacancy cannot be filled up immediately, or when a hereditary trustee is a minor and has no legally constituted guardian fit and willing to act as such or there is a dispute respecting the person who is entitled to act as such guardian, or

when a hereditary trustee is by reason of unsoundness of mind or other physical infirmity unable to discharge the functions of the trustee,

²[the Board] may appoint a fit person to discharge the functions of the trustee of such endowment, until another trustee of such endowment, until another trustee succeeds to the office or the disability of the trustee ceases to exist, as the case may be.

Nothing in this sub-section shall be deemed to affect anything contained in the Madras Court of Wards Act, 1902.

⁽¹⁾ Kadirvelu Chetty v. Nanjundaiyer, 35 I.C. 88=3 L.W. 512.

The endowment property may consist partly or wholly of a right to enjoy the revenues of property in the possession of the persons who have the right and the duty to manage such property, collect the income and hand it over when collected to be used in the proper manner for the purposes of the endowment. Such person may even have certain rights of apportionment of the revenue so handed over by them. There may be a general trustee of the whole endowment including the revenues when so collected and handed over. But in such a case the general trustee is not entitled to possession of properties out of which that portion of the revenue came. His rights do not commence until after the collection of the revenues by those who are in possession. An idol may have not merely a general trustee but also other subordinate representatives having the right to manage certain special portions of the property and pay over the income so collected to the endowment and even to some degree control its use. Ambalavana Pandara Sannidhi Avargal v. Sri Mechakshi Sundareswarar Devasthanam of Madura, 43 M. 665=47 I.A. 191=18 A.L.J. 594=2 U.P.L.R. (P.C.) 95=39 M.L.J. 50=28 M.L.T. 83=12 L.W. 212=56 I.C. 730=(1921) M.W.N. 11 (P.C.) (affirming on appeal, 28 M.L.J. 217=26 I.C. 841.) An idol is a judicial entity in Hindu Law. Ramcharan v. Govinda, 56 I.A. 104=56 Cal. 894=49 C.L.J. 321=29 L.W. 428=27 A.L.J. 414=114 I.C. 571=31 Bom.L.R. 715=1929 M.W.N. 427=33 C.W.N. 346=A.I.R. 1929 P.C. 65=56 M.L.J. 636 (P.C.).

- (2) In making an appointment under sub-section (1), the Board shall have due regard to the claims of disciples, if any, in the case of maths, and of members of the family, if any, entitled to the succession, in the case of temples.
- (3) The person so appointed shall be entitled to exercise all the powers which a trustee could exercise in relation to such endowment.

Scope of section.—Clause (1) provides for the appointment of interim trustees during occasions when there is a dispute as to succession or there is a temporary break in such succession. Subclause (2) draws attention to the preferential claims to these interim appointments of persons belonging to the family or other group in which the succession has by heredity or usage devolved.1

(1) Report of Select Committee.

An idol is a juridical person and similarly a Mutt, but to extend this doctrine to include the building in which the idol is deposited as in some way itself becoming a religious institution is a most unwarranted extension of this doctrine and would result in two juridical persons co-existing in the same institution. Thakurdwara Amritsar v. Ishar Das, 9 Lan. 28 I.C. 384=A.I.R. 1928 Lah. 375. See also A.I.R. 1928 All. 689. same institution. Thakurdwara Amritsar v. Ishar Das, 9 Lah. 588-110

The C. P. Code contains no rule for regulating the conduct of suits on behalf of a Hindu idol. A Hindu idol has juridical status with the power of suing and being sued. Its interests are attended to by a Manager. But where a person even though he has the deity in his charge is not in law the manager of the deity, he is not competent to represent the deity in an action. (33 All. 735 (F.B.); A.I.R. 1923 All. 160; A.I.R. 1925 P.C. 139, Ref.); 37 Cal. 885 (P.C.); 40 Mad. 212 (F.B.) Dist.) Gopalji Maharaj v. Krishna Sundar Nath, 27 A.L.J. 1251—A.I.R. 1929 All. 887.

A religious instituțion is a juristic person and can sue through its

vahivatdars, the 'panchas' to recover arrears from a person holding fund for certain objects of the trust. Mahadevrao v. Shri Omkareshvar Ghat, 31 Bom.L.R. 192=119 I.C. 775=A.I.R. 1929 Bom. 153.

The following cases relating to succession to headships of maths may

also be noted:

There is no rule of law of succession to headships of mutts. must be made out in each particular case. Where two mutts are affiliated to each other, the Swami of one may have the right to appoint a successor if the Swami of the latter down mutts, and numerous instances of such appointment himself. pointment cannot be expected from the nature of things. Raghubhushana v. Vidiavarithi, 34 I.C. 875.

The succession to the gadi of a mutt is governed by a custom and rules of the mutt which must be proved in each case unless it is admitted by the

opposite party.

site party. Ganga Ram v. Ramsaran, 34 I.C. 502.
Succession in the case of every mutt is governed by the usage of the particular institution. Unlike the East Coast mutt the rule of succession in the West Coast mutts is generally based on the injunctions contained in the Smritis, i.e., the title to headship does not depend upon nomination by the head, nor on selected by the disciples but solely upon the length of the

Madras Court of Wards Act (1902), not affected .- This clause is inserted with a view to avoid a possible inconsistency with some of the provisions of the Court of Wards Act. When a vacancy occurs in the office of a hereditary trustee or when a here-

period during which a person has been a sanyasin. Narayana Barathigal v. Ittuli Amma, 39 I.C. 893.

Where the plaintiff seeks the headship of a mutt as having been properly elected he must definitely establish that it was the custom to elect for such office. Paramahamsa Parasamaya v. Yavadrakhakshaki Ammal, 28 I.C. 829.

In a mutt the existence of a custom regarding succession is rendered probable by the adoption of the same custom in similar matters in neigh-

Raghubhushana v. Vidiavarithi, 34 I.C. 875. bouring mutts.

An appointment by the head of his successor though made according to usage is invalid if made as a compromise to gain a benefit or avoid a danger. Per Wallis, J.—Principles relating to family settlements do not govern cases like the appointment of head of mutt, Per Napier, J.—The appointment under a compromise is not necessarily bad but little defects in it may be cured if the appointment as a whole is in the interests of the institution. But where the appointment is made to avert a criminal prosecution of the head, it is bad. Kailasam Pillai v. Nataraja Tambiran. 32 M.L.J. 271=40 I.C. 627 (Affirmed on appeal, 39 M.L.J. 98=57 I.

Where the founder of a mutt has not prescribed any rules to be followed in the selection and appointment of succeeding mahants the method of their selection and appointment depends on the custom or usage which has prevailed in the Mutt in the past. An election of a mahant to fill a vacancy in order to be valid must be by a majority of the persons qualified to elect and duly assembled for that purpose; a separate election by a fraction of the qualified persons is not a valid election. Lahar Puri v. Puran Nath, 37 A. 298—29 I.C. 724—19 C.W.N. 718—21 C.L.J. 499—17 Bom.L.R. 475=18 M.L.T. 39=29 M.L.J. 75=2 L.W. 589=(1915) M.W.N. 526—42 I.A. 115 (P.C.). After a complete dedication the founder cannot make any change in the order of succession of shebaits unless he has made a reservation to that effect in the deed of dedication. (50 C. 197, followed; 41 C.L.J. 22, not followed). The texts of Hindu Law which would seem to suggest that the donor exercises a sort of supervision over the shebait's rights and duties and can remove a shebait during his lifetime, if he be not competent, refer to public and charitable endowments and not to dedications made to family idols. The shebaitship is ordinarily vested in the heirs of the founder in default of evidence that he has disposed of it otherwise or there has been some usage, course of dealing, or some circumstances to show a different mode of devolution. (16 I.A. 137; 40 I.A. 97, referred). Where the founder has not laid down an order of succession of shebaits in the deed of dedication, he can certainly confer a shebaitship upon some person other than the person carrying on the sheba. But it is not the law, nor is there in the ruling of the Privy Council in 52 I.A. 245 to suggest that even if the line of succession of shebaits is laid down in the deed of endowment, it could be altered by the donor during his lifetime.

Monorama Dasi v. Dhirendra Nath Basu, 34 C.W.N. 1087.

The nomination and ordination of a junior Pandarasannadhi is, in some cases, the customary manner of providing for the line of succession.

Thiruvambala Desikar v. Chinna Pandaram, 40 M. 177=30 M.L.J. 274=

(1916) 2 M.W.N. 43=34 I.C. 57=4 L.W. 306.

ditary trustee is a minor, the Board can, under this section, appoint a fit person. Now, when a vacancy occurs in the office of a hereditary trustee who is a ward under the Court of Wards, according

The office of Chinnapattam is inferior to the head of mutt; he has only a spes successionis in the mutt property till the death of the head. Kailasam Pillai v. Nataraja Tambiran, 32 M.L.J. 271=40 I.C. 627.

Mutts, in northern India, have been divided into 3 classes:— Viz., Mourusi, Panchayati, and Hakini. (1) In Mourusi mutts the office of chief mahant is hereditary and devolves upon the chief disciple of the existing mahant, who moreover usually nominates him as successor. (2) In Panchayati mutts, the office is elective, the presiding mahant being selected by an assembly of mahants. (3) In Hakini mutts, the appointment of the presiding mahant is vested in the ruling power or in the party who has endowed the temple. In the first class the chela succeeds and in default of a chela, the Gurubhai succeeds; where there are more chelas than one, the oldest generally succeeds but a junior chela may succeed, if he be found capable, and if he be selected by the last mahant as his successor. Achyutananda Das v. Jagan Nath Das, 21 C.L.J. 96=27 I.C. 739=20 C.W.N. 122.

A mutt or asthal is an institution of a monastic nature. It is established for the service of a particular cult, the instruction in its tenets and the observance of its rights. The followers of the cult and disciples in the institution are known as chelas; the chelas are of two classes, celibate The mahant is the head of the institution. The proand non-celibate. perty of a mutt or asthal is held by the mahant as its owner in trust for the mutt or institution itself. Although large administrative powers are undoubtedly vested in the reigning mahant the trusts exist and must be respected. Succession to the mahant in such property follows the succession to the office. As the mahant is not merely a spiritual preceptor but also a trustee for the asthal, the Courts will be justified in ignoring a collusive or fraudulent appointment of a successor by the reigning mahant and fill up the vacancy according to the rules of the institution. Questions of succession to the office of mahant or head of a mutt are not settled, by an appeal to the general customary law. It must depend on the custom or usage of the particular mutt or asthal. Ram Prakash v. Anand Das, 43 C. 707=43 I.A. 73=20 C.W.N. 802=14 A.L.J. 621=(1916) 1 M.W.N. 406=31 M.L.J. 1=18 Bom.L.R. 490=3 L.W. 556=24 C.L.J. 116=33 I.C. 583=20 M.L.T. 267 (P.C.). See also 2 Mad. 179; 11 M.I.A. 428.

Without determining whether the custom of the mutt was for the senior chela to succeed as of right or for the mahant to appoint his successor from among his chelas, the Privy Council held that the mahant had abdicated his office which could not revert to him having regard to his gross breach of trust in making a collusive and corrupt nomination as regards his successor, that the appointment itself was invalid and that the senior chela was entitled to possession of the office of mahant and the properties appertaining thereto, as on a vacancy. Where the person chosen by a mahaut as his successor is disqualified by reason of bodily infirmity or loathsome disease or of the leading of a life which is immoral or inconsistent with the religious vows of the brotherhood, the nomination is void and there is a vacancy in the office. Ram Prakash v. Anand Das, 43 C. 707=43 I.A. 73=33 I. C. 583 (P.C.).

The right to an office as mahant is a personal one and as the succession depends upon an election by a specific body called the blek the only person entitled to hold the offices is one who is duly elected. Gulzar Shah v. Sardar Ali Shah, A.I.R. 1930 Lah. 703 (2).

to the Court of Wards Act, the Court has got certain functions to discharge. It is with a view to avoid possible clash between its powers and the powers of the Board under this Act that this clause is introduced.1

S. 63 of the Madras Court of Wards Act runs as follows:--Powers of Court in regard to religious endowments of which ward is hereditary trustee or manager .- "If a ward is the here-

While it is open to person who is a shebait but not the founder of certain ancestral idols to endow property for the use and benefit of the idols, he cannot in any way alter the line of shebaits as prescribed by the founder. (53 Cal. 251, followed). Ashutosh Scal v. Benode Behary Seal, 34 C.W. N. 177=51 C.L.J. 80.

Where succeeding shebait gifted certain property to the idol and made it a condition that certain heirs of his should succeed to the office and the condition was held to be invalid in law, held that the gift could not take effect since it was made subject to a condition. Ashutosh Seal v. Benode Behari Seal, 34 C.W.N. 177=51 C.L.J. 80.

In the absence of a provision in the deed prescribing the mode of devolution to the office of shebait and in the absence of a custom to the contrary, the power to appoint a successor to a shebait reverts to the heirs of the founder of the trust and a shebait has no right to appoint a successor to himself. Ganga Charan v. Ram Chandra, 106 I.C. 389 (2)=A.I.R. 1928 All. 33.

With regard to an endowed property, successor in management of the endowed property may be considered as a legal representative of the prior manager of the same endowed property. Mt. Moti Bala Debi v. Salyanand

Tirtha Swami, A.I.R. 1930 All. 348.

A Hindu died in 1862 leaving a will by which he dedicated certain properties to a family idol. The deceased left three sons but the shebaitship was taken up by one of them and he appointed his successor from among his heirs. The last holder of the office died in 1913 leaving a will by which he appointed a stranger to the family as shebait. In subsequent probate proceedings the widow of the deceased consented to the shebaitship continuing in that person on her receiving a large sum of money. In a suit by the person nominated shebait for declaration of his right to the office, held, (1) that the devolution of the right to the office was governed by the will left by the founder, that it contemplated hereditary shebaitship and that the stranger was not consequently entitled to the office when there were the other heirs of the founder living; (2) that the transaction entered into by the widow of the last holder was neither a surrender nor a deed of compremise for the benefit of the idol, that it was an attempted transfer of a religious office and was consequently invalid. Per Rankin, C.J.—In a claim to establish the right of shebait it is not necessary for the plaintiff to establish that he is one of the heirs of the founder himself. It is not sufficient for him to show that he is an heir to the last incumbent. (22 C.L.J. 408, relied on). A person cannot be compelled to accept the office of shebait and may be entitled to refuse to continue in it. It may well be that in such a case the office goes to the person next in succession. But a sale of the office is a different thing and the purchaser cannot enforce it. Panchanan Reperies v. Superdes N. Superdes V. Banerjee v. Surendra Nath Mukerjee. 50 C.L.J. 382=A.I.R. 1930 Cal.

(1) See Madras Court of Wards Act, S. 63-Proceedings in Council-

Speech of the Advocate-General.

ditary trustee or manager of a temple, mosque or other religious establishment or endowment the Court, notwithstanding anything contained in section 22 of the Religious Endowments Act, 1863, may make such arrangements as it thinks fit for the discharge, during the wardship, of the ward's duties as trustee or manager, provided that for the direct and personal management of the religious affairs of any such institution, establishment or endowment the Court shall appoint suitable persons other than officers of Government and that the Court shall as far as possible restrict its superintendence to the preservation of the property belonging to the institution, establishment or endowment."

Appointment and punishment of servants of temples.

Appointment and punishment of servants of temples.

Appointment and punishment of servants of temples.

Appointment and punishment of servants of temples and control of the trustee; and the trustee may fine, suspend, remove or

dismiss any of them for breach of trust, incapacity, disobedience of lawful orders, neglect of duty, misconduct or other sufficient cause:

Provided that the [Provincial Government] may, in respect of any specified hereditary office-holder or servant or class of hereditary office-holders or servants and subject to the provisions of section 79, by order restrict and place under such control as they may think fit the exercise by the trustee of his powers of punishment under this sub-section.

- [(2) Any office-holder or servant of a temple punished by a trustee under sub-section (1) may, within such time as may be prescribed, appeal to the Assistant Commissioner whose decision shall, in the case of a non-hereditary office-holder or servant, be final and shall not be liable to be modified or cancelled in a Court of Law.
- (3) A hereditary office-holder or servant of a temple may, within such time as may be prescribed, prefer a further appeal to the Board against the order of an Assistant Commissioner on an appeal under sub-section (2) and the decision of the Board shall be final and shall not be liable to be modified or cancelled in a Court of Law.] (Substituted by Madras Act X of 1946).

⁽¹⁾ See Madras Court of Wards Act (I of 1902), S. 63.

Scope of section .- An archaka of a temple who has been dismissed from his office by a trustee is not entitled to challenge the correctness of the trustee's action in a Court of law. His remedy is limited by S. 43 to an appeal to the Temple Committee (now Assistant Commissioner) or to the Religious Endowments Board as the case may be. I.L.R. (1940) Mad. 825-51 L.W. 185-A.I.R. 1940 Mad 493-(1940) 1 M.L.J. 352. ing the decision of Wadsworth, J. in 1938 Mad. 972=(1938) 2 M. L. J. 516.] See also 1946 Mad. 28; 1943 Mad. 222=(1943) 1 M.L.J. 496. Where a trustee dismisses an archaka of a temple without framing any charge and without giving him any opportunity to explain his conduct or to show cause, such dismissal is high-handed and opposed to the principles of natural justice, and is therefore unsustainable. 1942 M.W.N. 769=1943 Mad. 222=(1943) 1 M.L.J. 496. It is only in cases where the trustee has actually acted for the reasons given in S. 43 (1) and enumerated in the last paragraph that the provisions of S. 43 (2) and (3) can be attract-There is no doubt that a trustee can exercise the powers mentioned in S. 43 (1) only when the reasons given in that clause are found by him to have existed and not merely because he purports to seek shelter behind them on grounds which could not be brought within the ambit of S. 43 (1). A Civil Court is not a Court of appeal, but it is open to the Civil Court to examine the grounds on which the trustee has acted and to ascertain whether they could or they could not be brought under the section. Civil Court has the power to go into the question and ascertain whether any of the reasons did in fact exist which would confer jurisdiction on the trustee to act under S. 43, and if it be found that they did not exist, he must be held to have exceeded the powers conferred on him by S. 43, and the decision of the Board confirming the trustee's acts cannot be regarded as final. In the absence of the finality of that decision the jurisdiction of the Civil Court is not ousted. 1942 M.W.N. 769-1943 Mad. 232-(1943) 1 M. L. J. 496.

Secs. 43 and 73.—A teachnical defect in legal qualification of the trustee at the time of the dismissal would not enable the dismissed servant or officer to question the validity of the dismissal in a Civil Court in view of the provisions of S. 43 read with S. 73 of the Act which are intended to oust the jurisdiction of the Civil Court to question the propriety of any order of dismissal. 1940 M.W.N. 74.

Secs. 43 and 79.—S. 43 now vests the power of disciplinary control over office-holders and servants in a temple in the trustee of the temple, and therefore a declaration in a decree passed prior to that Act that such right of control over a paricharaka was

vested in the holder of the archaka office is inconsistent with the statutory provision in S. 43 and must therefore be treated as abrogated and of no effect to that extent. S. 79 does not save such a decree from the operation of the Act. As trustee is therefore entitled to eject a paricharaka from his office notwithstanding that before the Act the right of appointment, dismissal and control were solely declared to be in the archaka. A.I.R. 1940 Mad. 28=(1939) 2 M.L.J. 661. See also 41 Cal. 19=17 C.W.N. 1045

Right to remove temple servants.—A power to appoint temple servants includes and involves a power to revoke the appointment and dismisses the servant. A person holding office at the pleasure of another is liable to be dismissed by that other without notice and even without cause. In all other cases removal can only be for good cause and after notice.2

Adverse possession .- Where certain persons come to occupy temple property originally as servants or representatives of the deity, they could not, during their occupation, by a wish, change the nature of their possession.3

Archakas .- The position of a hereditary archaka of a temple is that of a servant subject to the disciplinary power of the trustee. He can be dismissed by the trustee, but only for good reasons, which are liable to examination by Courts of Justice.5

Non-turnholder archakas are entitled to perform for their clients special acts of worship, such as Navavarana puja, without

(2) See 2 L.W. 306 and cases referred to therein.
(3) See Mulji v. Bhulabhai, 12 B. 322.

(4) Seshadri v. Ranga Bhattar, 35 Mad. 631.

(5) Ibid.

The position of a hereditary archaka who is merely a servant of the temple in relation to the trustee, that is, representative of the temple, is different from the position in which the trustee stands to the temple Committee. A hereditary archaka can be dismissed by the trustee, but only for good reasons which are liable to examination by Court of Justice.

No notice is required for an ad interim suspension pending enquiry into a complaint against a servant entitled to hold office during good behaviour

Where the order of suspension passed on an archaka by the trustee is not passed as a punishment for an offence of which he is found guilty but was ad interim preventing him from performing his office pending the investigation of the charges of misconduct against him, the order of suspension is not invalid simply because it was passed without notice to the archaka.

In any event the Court will not set aside the order of suspension, where after enquiry, it has been found that it was proper and justifiable under the circumstances. (Ibid.) See also 41 Cal. 19: 17 C.W.N. 1045: 20 I.C.

217; 25 C.W.N. 201 (204).

⁽¹⁾ See Sugden on Powers, 238; I.L.R. 41 Cal. 19 cited in 2 L.W. 307 at p. 308.

prejudice to the customary worship being performed during the usual hours by the turnholder.1

Archaka and Trustee.—"The trustee is no servant of the (temple) committee. The position of an archaka, on the other hand, though he may have a hereditary tenure in the office, is essentially that of a servant. The trustee is the representative of the temple, and the archaka must be subject to his disciplinary jurisdiction. It cannot be said that his relation to the trustee is similar to the position of the trustee in relation to the committee."

Burden of proof.—It rests on the party who wishes to show that there has been a valid dismissal to prove the fact that there was good and sufficient cause.³

Where plaintiffs have long held as Khadims under the superior holders or managers of endowed property, and set of a claim to hold a permanent Khadim tenure, from which they are not liable to be ejected except for misconduct the burden of proof is on them.4

Inams for service in temples.—The following extract from the Report of the Commissioners regarding Service Inams attached to temples shows the work of the Board in respect of these inams:—

"One of the important questions which the Board had seriously to consider at the very outset of its activities in virtue of its general powers of supervision was the resumption by the Government of service inams attached to temples. In hundreds of cases. inamdars in possession of service inams attached to temples have ceased to perform their services and inam lands have been alienated or resumed by Government. In many instances the inamdars have deliberately courted resumption of the inams by a wanton neglect of the services with a view to get the lands assigned to them on ryotwari patta. The number of such cases seems to have increased after people came to know of the possibility of control over temples by a legislative enactment. With a view to take early and effective steps to combat this evil a general circular requiring the institution of careful enquiries was issued to the presidents of temple committees and the inspecting staff of the Board. When the Board came to know of cases where alienations or resumptions had taken place or where resumptions were impending, trustees and inamdars were addressed to take steps to set aside the alienations wherever possible, and the Revenue authorities were requested to give time

^{(1) 2} L.W. 127.

^{(2) 21} M.L.J. 580 at pp. 582-583.

^{(3) 5} L.W. 672 (677).

⁽⁴⁾ Chand Mean v. Khondkar, 6 W.R. 89.

to the trustees to set right matters before taking resumption proceedings or to assign the assessment for the benefit of the temple, where orders for resumption had recently been passed. Board of Revenue which was requested to arrange for inam lands themselves being assigned in favour of the temples expressed the view that action could be ordinarily taken only on the footing that the assessment alone constituted the inam. It agreed, however, that even in cases of old resumptions where the assessment was being credited to the general revenues it would consider the question of re-assigning the same to the institutions concerned for the original or some kindred purpose, if the services could now be arranged for. Instructions have been issued to find out such cases with a view to take appropriate action in the light of the communication from the Board of Revenue. But progress in this as in other matters is bound to be slow till the Board's position becomes secure and stable and it is able to obtain the hearty cooperation of Committees and trustees. It may, however, be added that in some cases the Board has already secured for temples inam lands which would otherwise have been lost to them, when in several other cases the action to be taken is engaging the attention of the Board."1

Suspension, Fine and Notice.—The trustee of a temple has power to enquire into the conduct of temple servants and dismiss them for misconduct. The right of interim suspension pending such enquiry is incidental to such power, and no notice is required for an interim suspension pending enquiry.²

Appeal.—This section provides for an appeal and in some cases for a further appeal from an order of fine, suspension, removal, etc., by the trustee, and also indicates the authorities to which the aggrieved party may appeal.³

44. Where an endowment for the performance of a

Enforcement of service when endowment is a charge on property.

charity or service connected with a temple consists merely of a charge on property and there is failure in the due performance of the charity or service by the person responsible, the trustee of the temple may

require the person in possession of the property on which the endowment is a charge to pay to the trustee the expenses incurred or likely to be incurred in causing the charity or service

⁽¹⁾ First Report of the Rel. End. Board, p. 13.
(2) Seshadri v. Ranga Battar, 35 Mad. 631; see also as to notice, 4
L.W. 306; as to power to fine, see 21 M.L.J. at pp. 739-741.

⁽³⁾ See sub-clauses (2), (3) and (4).

to be performed otherwise. In default of such person making the payment as required by the trustee, the Court shall, on the application of the trustee, pass an order for the recovery of the amount and such order may be enforced as if it were a decree of such court:

Provided that where the person in possession of the property on which the endowment is a charge is not the person responsible in law for the performance of the charity or service, and the amount referred to in this section is recovered from the person in possession, the court shall, on the application of such person, pass an order for the recovery of the amount from the person responsible in law and such order may also be enforced as if it were a decree of such court.

Applicability—Service inams.—S. 44 does not enable the Court to make an order in respect of services to a temple which are remunerated by a service inam. The section refers to the case of an endowment which is clearly in the nature of a charge and a charge only, that is to say, where otherwise ordinary land is made subject to such a charge, the proceeds of which are to be paid by the holder to the institution. In the case of an inam land, no such payment is in question not any charge securing it and S. 44 has no application thereto.—56 M. 731—144 I.C. 606 (1)—1933 M.W.N. 508—38 L.W. 94—A.I.R. 1933 M. 549—65 M.L.J. 54.

Secs. 44 and 73.—One P by her will, directed that out of the income of certain immoveable properties belonging to her, the cost of performing religious services in a specified temple should be met. The trustees of the temple sued for recovery of the amount of said cost from the defendants who had become possessed of the properties subject to the charges created by the testatrix. The defendants pleaded Ss. 44 and 73 of the Act as a bar to the suit. Held, (1) S. 44 of the Act did not operate as a bar to the suit; (2) that S. 73 of the Act had no application to the case as the suit was not one for the administration or management of a religious endowment and did not fall within the categories referred to in S. 73 (1). I.L.R. (1945) Mad. 553 = (1944) M.W.N. 726=58 L.W. 12=A.I.R. 1945 Mad. 101=(1945) 1 M.L.J. 63.

Scope of Section.—The Select Committee said:—"The endowment for a service in a temple consists in some cases only of a mere charge on property which continues in the possession of the donor's family, the latter being at liberty to appropriate all the surplus income from the property to private purposes. We have

made it clear that if default occurs in the performance of the service in such a case, the trustee should only try to recover the cost of performing the service from the person in possession of the property charged."

Dedication may be complete or partial charge on estate.—A dedication of property to religious uses may be complete or partial.

Where the whole property is dedicated absolutely to the worship of an idol, and no person has any beneficial interest in it, the dedication is said to be absolute and complete. In such a case the property is held by the idol though it is only in an ideal sense that property is so held, and it cannot be alienated except in certain specified cases of necessity.²

Where there is a mere charge or trust created in favour of an idol, the dedication is said to be partial or qualified. In such a case the property descends, and is alienable and partible, in the ordinary way, the only difference being that it passes subject to the trust or charge in favour of the idol.⁸

In determining whether the will of a Hindu gives the testator's estate to an idol subject to a charge in favour of the heir of the testator, or makes the gift to the idol a charge upon the estate, there is no fixed rule depending on the use of particular terms in the will; the question depends on the construction of the will as a whole. Thus, although a will provides that the property of the testator "shall be considered to be the property of" a certain idol,

⁽¹⁾ See Report of the Select Committee.

⁽²⁾ Jagadindra Nath v. Hemanta, 32 C. 129: 31 I.A. 203 (P.C.); Jadu Nath Singh v. Thakur Sita Ramji, 44 I.A. 187: 39 A. 554 (P.C.). See also Notes under S. 76. infra.

⁽³⁾ Jagadindra Nath v. Hemanta, 32 C. 129: 31 I.A. 203; Sonatun v. Juggautsoondarce, 8 M.I.A. 60.

Dedication, Proof of.—Where a Hindu built a temple and installed therein a deity known as Sri Thakur Murli Manoharji which was not his family deity and his widow executed a deed of trust conveying certain properties for the pooja of the deity and provision were also made for the appointment of shebait, etc., held, that the public endowment came into existence at any rate during the lifetime of the widow, and that Act XIV of 1920 would apply to the trust in question. Jadaba Jha v. Satdoo Jha. 10 Pat.L.T. 677=A.I.R. 1929 Pat. 723.

A dedication of the family property for the purpose of a religious charity may be validly made without any instrument in writing even if it be an appropriation of landed property. But it must be shown that there was real sankalp or samarpan. Harihar Prasad v. Gurugranth Saheb, 11 Pat.L.T. 658.

Where the temple is of comparatively recent foundation and its origin well-known and where there is no deed of gift or dedication, the nature of the dedication must be determined by the usage. Where there is an ambiguity as to the trust the course of action can be called in aid as inferring that the person concerned in the trust have not been committing a breach of

the further provisions such as that the residue after defraying the expenses of the temples "shall be used by our legal heirs to meet their own expenses," and the circumstances, such as that in respect of the ceremonies to be performed the expenditure was fixed by the will and would absorb only a small proportion of the total income, may indicate that the intention was that the heirs should

trust from the commencement. (L.R. 4 Ch. App. 722, relied on.) Kumaraswamy Asary v. Poojari Lakshman Goundan, 31 L.W. 499=A.I.R. 1930 Mad. 549.

Dedication of property to—Real dedication or colorable attempt to create perpetuity. Where a person purported by will to dedicate certain property yielding a monthly income of Rs. 11 to a certain idol and he provided that his sons should act as managers and get Rs. 5 per mensem as remuneration from the endowed property and there was a further provision that if the income of the property should expand, the managers should get a proportionae increase in their salary. Held, that there was no real dedication of the property for religious purposes but only an attempt to create a perpetuity in favour of the sons. Held, also, that the will did not give a proprietary interest to the two sons and that the heir-at-law could recover his share. Niranjan Prasad v. Behari Lal, 27 A.L.J. 324=116 I.C. 849=A.I.R. 1929 A. 302.

Religious Endowment—Dedication of property to—Writing out—Necessary. See Rangacharya v. Raman Acharya, 27 A.L.J. 229=114 I.C. 734.

Held, that the description of properties as "Khairat" and Bishunprit" in revenue papers indicate that the properties belong to a religious or charitable endowment, but such entries however are not conclusive. Naurangi Lal v. Ramcharan Das, 11 Pat.L.T. 403=A.I.R. 1930 Pat. 455.

A statement in the dedication, that the transaction was for the benefit

A statement in the dedication, that the transaction was for the benefit of the family good and with the object of increasing the income of the debutter property, is attributable to the notion which unfortunately prevails amongst shebaits that their own interests and those of the deity are always identical. No legal inference that the dedication was completely for religion follows from such statement. Barboni Coal Concern, Ltd. v. Paricharak, A.I.R. 1930 Cal. 526.

Religious endowment—Power to appoint successor reserved—Extent of. Where a person by a deed of endowment of his property to religious institution appoints himself the first shebait and reserves to himself the power of appointing a suitable successor to himself, the power so reserved is not exhausted after being exercised once but it entitles the person to make repeated nominations. His choice remains unfettered and he is at perfect liberty to revise his views. Further, like all testamentary dispositions, his nomination is to speak as on his death and his last direction is to cancel all previous declarations on the subject. Ishri Prasad Misir v. Ram Krishna Das, A.T.R. 1930 All. 620.

Religious endowments—Property subject to charge—Suit by one shebait for his share of rent. In cases in which the shebaits have beneficial interests in the dedicated property, and such interests descend beneficially and the several shebaits are in separate enjoyment of their respective interest in severalty, it is difficult to see why the principles applicable to cases of complete dedications should necessarily be applied. Where a debutter was always treated as one of those less perfect dedications in which the shebaits have treated the property as secular in all respects but subject to a religious charge a suit by one of the shebaits and for his share of the rent only is

take the property subject to a charge for the performance of the religious purposes named.1

Procedure and appeal.—The proviso to the section states that the order of the Court may be enforced as if it were a decree of such Court.

maintainable. 41 I.C. 837, Dis.; 32 Cal. 129 (P.C.). Ref. Barboni Coal

Concern Ltd. v. Paricharak, A.I.R. 1930 Cal: 526.

Held, (1) that a dedication though originally invalid as being in excess of the powers of a Hindu limited owner may be validated by the conduct of the reversioners acknowledging the trust after the death of the limited owner, (2) that on the construction of the deed of trust the properties themselves were conveyed to the charity and not merely the income and that therefore the surplus income should be applied to objects of trust mentioned by the author of the trust. Pichai Pillai v. Lingham Aiyar, I.L.T. 40 Mad. 16=108 I.C. 199=A.I.R. 1928 Mad. 268.

There is nothing illegal in the founder having created a trust to the effect that the temple should be maintained out of the offerings and that the balance should go to his family. Where the founder, a pious Hindu, installed an idol and from the offerings made by worshippers constructed the temple and after meeting the temple expenses utilised the balance towards purchase of property for his own benefit and the course of conduct was pursued by his successors also, held, that in the absence of a written deed of dedication the course of conduct could be taken as a guide to the nature of the dedication and that the appropriation of the surplus offerings by the poojari or trustee was not a breach of trust. Kumaraswamy Asary v. Poojari Lakshmana Goundan, 31 L.W. 499=A.I.R. 1930 M. 549.

(1) Pande Har Narain v. Surja Kunwari, (1921) 48 I.A. 143=43 A. 291.

A share of the income from the family properties may be dedicated to a trust and the whole family properties then remain charged with the payment of the amount. Nagar Damodhara Shanbogue v. Ramappaya, 25 I. C. 399, (Madras).

The mere fact that the founder of a temple intended for public worship is spending a portion of his income derived from a certain property for conducting the temple is insufficient to establish that the corpus of the property is dedicated to the use of the temple. Parmeshri Dass v. Girdhari Lal, 30 I.C. 240=2 O.L.J. 259, (2 Cal. 341, Ref.).

Mere appropriation of the rents and profits to the upkeep of a religious institution is not sufficient proof that the property is endowed. Abdul Ghafur v. Shiam Sundar Das, 17 I.C. 303=16 O.C. 76 (2 Cal. 341, Foll.). The following cases of illusory dedication may also be noted:—

A Hindu executed and got registered a deed endowing certain property to charity but he treated it as his own, got his son's name in the Revenue papers, and executed a deed of gift in favour of the son. The son also treated the property as private, and mortgaged it. The income of the property was not devoted to charity: Held, that mere execution and registration of endowment deed did not make the property an enowed one, where there was no transfer of ownership from donor to donee. Ram Dhan v. Prag Narain, 43 A. 503=19 A.L.J. 447=62 I.C. 862.

By a deed of endowment so-called the donor purported to dedicate practically the whole of his property to an idol just before his death. He was to be the manager during his life and after him his widow, thereafter, his daughter's sons and their descendants. He undertook to effect mutation

Order of District Court on application—Appeal.—A proceeding under S. 44 is not a suit, and no appeal lies from an order passed by the District Judge under S. 84 (2) of the Act either under that Act or under the Civil Procedure Code. Such an adjudication is not a decree under S. 96 read with S. 2 (2), C.P. Code. 41 L.W. 682—A.I.R. 1935 M. 373—68 M.L.J. 423.

44-A. (

Enfranchisement of freeing of lands, etc., held by a devadasi on condition of service in a temple.

(1) (a) (i) Where the remuneration for any service to be performed by a devadasi in a temple consists of lands granted or continued in respect of, or annexed to, such service by the Government, the [Provincial Government] shall enfranchise the said

lands from the condition of service, by the imposition of quitrent;

(ii) Where the remuneration for such service consists of an assignment of land revenue so granted or continued, the [Provincial Government] shall enfranchise such assignment of revenue from the condition of service:

Provided that where, at the time when proceedings are taken under this sub-section, the devadasi is herself the owner of the lands in respect of which the assignment of revenue has been made, enfranchisement shall be effected and quit-rent imposed in the manner laid down in sub-clause (i);

(iii) Where the remuneration for such service consists in in part of lands and in part of an assignment of land revenue, enfranchisement of the lands shall be effected in the manner laid down in sub-clause (i) and of the assignment of land revenue in the manner laid down in sub-clause (ii);

of names in favour of the idol, to use the income of the endowed property in meeting the expenses of Puja, Rajbhag and repair of temple and to keep separate and regular account of the income and expenditure. About 16 months later the donor died and was succeeded by his widow. The donor had never applied for mutation of names and not more than a tenth part of the income had ever been spent upon the purposes of the endowment and no account books showing the income and expenditure were produced. Held, that all these circumstances showed that the donor did not really intend to create a religious endowment and that there was no real dedication to the idol. The creditors were allowed to attach property in execution of decrees. Sri Thakurji v. Sukhdeo Singh, 42 A. 395=18 A.L.J. 390=58 I.C. 583 (F.B.).

Explanation.—For the purposes of the clause, a grant shall be deemed to consist of an assignment of land revenue in all cases in which the devadasi herself is not, at the time specified in the proviso to sub-clause (ii), the owner of the lands in question.

- (b) Enfranchisement under clause (a) shall be effected in accordance with such rules as the [Provincial Government] may make in this behalf and shall take effect as and from such date as the [Provincial Government] may fix.
- (2) Where the remuneration for such service consists, in whole or in part of lands or of produce of lands not falling under sub-section (1), the [Provincial Government] shall direct the Collector to determine the amount of rent payable on the lands or the produce in question. The Collector shall thereupon, after giving notice to the parties concerned and holding such inquiry as may be prescribed by the [Provincial Government], by an order determine the amount of rent, and in doing so, he shall have due regard to
- (a) the rent payable by the tenant for lands of a similar description and with similar advantages in the same village or neighbouring villages; and
- (b) the improvements, if any, effected by the devadasi, in respect of the lands.

Such order shall be communicated to the parties concerned and also published in the manner prescribed.

(3) The amount of rent fixed by the Collector under sub-section (2) may be questioned by petition presented to the Board of Revenue within three months of the date of the publication of the order under the said sub-section but subject to the result of such petition, the order of the Collector fixing the amount of rent under sub-section (2) shall be final and shall not be liable to be contested in any court of law:

Provided, however, that the Board of Revenue shall have power on sufficient grounds to entertain a petition presented after the expiration of the period of three months.

(4) While determining the rent under sub-section (2), the Collector shall fix a date from which the order shall take

effect and such lands or produce shall be deemed to have been freed from the condition of service as and from the date so fixed.

- (5) No obligation to render any service relating to any temple to which any devadasi may be subject by reason of any grant of land or assignment of land revenue or produce derived from land, shall be enforceable on such land, assignment or produce being enfranchised or freed, as the case may be, in the manner hereinbefore provided.
- (6) No order passed under sub-sections (1), (2) and (3) shall operate as a bar to the trial of any suit or issue relating to the right to enjoy the land or assignment of land revenue or produce derived from land as the case may be.
- (7) (a) The quit-rent imposed under sub-section (1) shall be payable to the temple concerned.
- (b) The assignment of land revenue enfranchised under sub-section (1) or the rent fixed under sub-sections (2) and (3) as the case may be shall be payable to the devadasi concerned during her lifetime and after her death to the temple concerned.
- (8) For the purpose of this section 'devadasi' shall mean any Hindu unmarried female, who is dedicated to a temple.

The general rule that were service inams are resumed and there is a re-grant, the original title is entinguished and that the grant constitutes the root of a fresh title does not apply to all service inams irrespective of their nature. As regards a Devadasi service inam, there is no rule that its enfranchisement under S. 44-A of the Act extinguishes the old title and creates a new one. 59 L.W. 17=1946 M.W.N. 79=(1946) 1 M.L.J. 85.

Section 44-A was inserted by Madras Act V of 1929.—The following extracts from the Statement of Objects and Reasons would show the necessity for the passing of this Act:—

"The system of dedication of young girls to Hindu temples might properly have originated with the noblest and highest of motives; but now, seeing that it has degenerated into something highly objectionable and that the majority of these girls take to a life of impurity as is so very well known to the general public, it is necessary that the sanction of our temple authorities to such a practice of dedication which breeds immorality, promiscuity and irresponsibility in both men and women, be done away with in the interest of the individuals and the nation at large, and thus

the public be disabused of the notion that our religion encourages immorality in either man or woman, and that the services of these women in any way form an essential part of the worship in the temples. It may here be stated that the progressive and enlightened State of Mysore has abolished the practice of dedication to the temples even as early as 1909, as is evidenced in G.O. No. 1560-71-Muz. F. 84-05-3, dated Bangalore, 10th April, 1909."—Statement of Objects and Reasons, Fort St. George Gazette, Part IV, 25th September, 1928.

When the Bill was referred to a Select Committee the Committee said:—

"The object of the Act is to discourage the dedication of girls as Devadasis for service in Hindu temples, by freeing the lands, if any, held by them for such service, from the condition of service and making them the owners thereof, and thereby removing an important inducement for the perpetuation of the system of dedication. The Bill as introduced into the Council sought to effect this enfranchisement by adding a proviso to section 44 of the Madras Religious Endowments Act, requiring that all grants of land held by Devadasis on condition of service be enfranchised in favour of the present holders thereof and that they be not required to perform any service in temples. The Select Committee consider that such a bald provision would be unworkable in practice, and that in addition a procedure should be provided for the enfranchisement of the various classes of Devadasi inams, which may consist either of land or assignment of land revenue granted by the State or by private persons. They have accordingly recommended the insertion after section 44 of a new section instead of a mere proviso. laying down a procedure for the enfranchisement of inams granted by Government as well as by private individuals and declaring that on such enfranchisement the Devadasi shall be entitled to enjoy the inam free from the obligation of service. In the case of inam granted by the Government, the Committee have provided for the payment of quit-rent by the Devadasi to the temple, while in the case of post-settlement grants made by proprietors of estates and grants made by ryotwari landholders as well as by the temples themselves, they have thought it fair and equitable that the Devadasi who is freed from her obligation to do service and allowed to take a free-hold in the lands in her possession, should pay a rent to be fixed by the Collector to the temple concerned. The Committee have empowered the Local Government to make rules for the imposition of the quit-rent on inams granted by the State, while for the fixing of the rents on other mams the Committee have incorporated in the Bill provisions analogous to those contained in section 40 of the Madras Estates Land Act for the fixing of money rents."-See Fort St. George Gazette, Part IV, 11th December. 1928, pp. 1929-30.

Resumption and re-grant of inam granted for the performance of any charity or service connected with a math or temple in case of alienation of the inam or of failure to perform the charity or service.

1 44-B. (1) Any exchange, gift, sale or mortgage, and any lease for a term exceeding five years, of the whole or any portion of (any inam granted for the support or maintenance of a math or temple or for the performance of a charity or service connected therewith)2 and made, confirmed or recognized by the British Government, shall be null and void].

- (2) (a) The Collector may, on his own motion, or on the application of the trustee of the math or temple or of the [Assistant Commissioner]3 or of the Board or of any person having interest in the math or temple who has obtained the consent of such trustee, [Assistant Commissioner]3 or Board, by order, resume the whole or any part of any such inam, on one or more of the following grounds, namely:-
- (i) that the holder of such inam or part has made an exchange, gift, sale or mortgage of the same or any portion thereof or has granted a lease of the same or any portion thereof for term exceeding five years, or
- (ii) that the holder of such inam or part has failed to perform or make the necessary arrangements for performing, in accordance with the custom or usage or such math or temple. the charity or service for performing which the mam had been made, confirmed or recognized by the British Government, or any part of the said charity or service, as the case may be, or
- (iii) that the math or temple has ceased to exist or the charity or service in question has in any way become impossible of performance.

When passing an order under this clause, the Collector shall determine whether such inam or the inam comprising such part, as the case may be, is a grant of both the melvaram and the kudivaram or only of the melvaram.

Sec. 44-B inserted by S. 2, Madras Act XII of 1935.
 Substituted and Explanation added by Madras Act X of 1946.
 Substituted by Madras Act V of 1944.

- (b) Before passing an order under clause (a), the Collector shall give notice to the trustee, to the [Assistant Commissioner]¹ to the Board, to the inamdar concerned or where only a part of the inam is affected, to the holder of such part as well as to the holder or holders of the other part or parts, and to the alience, if any, hear their objections, if any, and hold such inquiry as may be prescribed.
- (c) A copy of every order passed under clause (a) shall be communicated [to the Board and each of the persons]¹ mentioned in clause (b), and shall also be published in the manner prescribed.
- (d) (i) Any party aggrieved by an order of the Collector under clause (a) may appeal to the District Collector within such time as may be prescribed, and on such appeal the District Collector may, after giving notice [to the Board and each of the persons] mentioned in clause (b) and after holding such inquiry as may be prescribed, pass an order confirming, modifying or cancelling the order of the Collector.
- (ii) The order of the District Collector on such appeal, or the order of the Collector under clause (a) where no appeal is preferred under sub-clause (i) to the District Collector within the time prescribed, shall be final:

Provided that where there has been an appeal under subclause (i) and it has been decided by the District Collector or where there has been no appeal to the District Collector and the time for preferring an appeal has expired, any party aggrieved by the final order of the District Collector or the Collector, as the case may be, may file a suit in a Civil Court for determining whether the inam comprises both the melvaram and the kudivaram or only the melvaram. Such a suit shall be instituted within six months—

from the date of the order of the District Collector on appeal, where there has been an appeal under sub-clause (i), or,

from the date of the expiry of the period prescribed under sub-clause (i) for an appeal to the District Collector, in a case where there has been no appeal.

⁽¹⁾ Substituted by Madras Act V of 1944.

- (e) Except as otherwise provided in clause (d) an order of resumption passed under this section shall not be liable to be questioned in any Court by suit or otherwise.
- (f) Where any inam or part of an inam is resumed under this section, the Collector or the District Collector as the case may be, shall, by order, regrant such inam or part—
- (i) as an endowment to the math or temple concerned, or
- (ii) in case of resumption on the ground that the math or temple has ceased to exist or that the charity or service in question has in any way become impossible of performance, as an endowment to the Board, for appropriation to such religious, educational or charitable purposes not inconsistent with the objects of such math or temple, as the Board may direct.
- (g) The order of re-grant made under clause (f) shall, on application made to the Collector within the time prescribed, be executed by him in the manner prescribed.
- (h) Nothing in this section shall affect the operation of section 44-A.]

Applicability.—The expression "service connected with math or temple" in S. 44-B (1) cannot be restricted to service performed by the holder of a service inam. It is a comprehensive expression implying only that the reason for the grant was that something connected with the maintenance of temple services should be inaugurated or provided for. The object of the section clearly is that if there has been an alienation of such an inam, certain powers should be exercised in order that the property should be restored to the temple and the service intended to be provided for should continue. Where the trustee of a temple alienates such a service inam, he is acting as the agent of the holder of the inam, that is, the delay itself, and so the provisions of S. 44-B (2) (a) (i) are brought into action, and the inam can be resumed. 1945 M.W.N. 151=58 L.W. 119=1945 M. 323=(1945) 1 M.L.J. 184.

Sec. 44-B (2) (d) (i): Appeal.—The District Collector is empowered by S. 44-B (d) (i) to make the order of resumption in a case where the Collector refuses to make it in the first instance. The clause gives an unqualified right of appeal and is not confined to an order of resumption. 51 L.W. 735—A.I.R. 1940 Mad. 811—(1941) 1 M.L.J. 891. Notice to respondents is a condition precedent to the exercise of appellate powers by the District

Collector under S. 44-B (2) (d) (i) Before he exercises his power to reverse an order passed by the Revenue Divisional Officer under S. 44-B (2), he must serve notice on the respondents and give them an opportunity of being heard. An order passed without such notice is without jurisdiction and is liable to be set aside by the High Court by the issue of a writ of certiorari. The fact that the order is substantially correct is no ground for not issuing a writ. 55 L.W. 616=A.I.R. 1942 Mad. 706=(1942) 2 M.L.J. 470=1.L.R. (1943) M. 402.

Maintenance of accounts and appointments of auditors.

1[45. (1) The Board and the trustee of every math, temple or specific endowment shall keep regular accounts of all receipts and disbursements.

- (2) The accounts of the Board, and of every math, temple or specific endowment, the annual income of which as determined under section 69 for the fasli year immediately preceding is not less than sixty thousand rupees, shall be subject to concurrent audit, that is to say, the audit shall take place as and when expenditure is incurred.
- (3) The accounts of every math, temple or specific endowment not governed by sub-section (2) shall be audited annually, or if the Board so directs in any case or class of cases, at shorter intervals.
 - (4) The audit shall be made—
- (a) in the case of the Board, by auditors appointed by the Provincial Government:
- (b) in the case of a math, temple or specific endowment the annual income of which as determined under section 69 for the fashi year immediately preceding is not less than one thousand rupees, by auditors appointed in the prescribed manner; and
- (c) in the case of any other math, temple or specific endowment, by an office or servant of the Board deputed by it for the purpose.
- (5) Every auditor appointed under this section shall be deemed to be a public servant within the meaning of section 21

⁽¹⁾ Secs. 45 to 48-B substituted for old Sections 45 to 48 by Madras Act X of 1946.

of the Indian Penal Code.] (Substituted by Madras Act X of 1946).

- Submission of audit report.

 After completing the audit for any year or shorter period, or for any transaction or series of transactions, as the case may be, the auditor shall send a report—
- (a) to the Provincial Government, in the case of the accounts of the Board,
- (b) to the Board, in the case of the accounts of a math or specific endowment attached to a math, and
- (c) to the Assistant Commissioner concerned, in other cases.] (Substituted by Madras Act X of 1946).
- Contents of the audit report.

 Contents of the audit penditure, or of failure to recover moneys or other property due to the Board, math, temple or specific endowment, as the case may be, or of loss or waste of money or other property thereof, caused by neglect or misconduct.
- (2) The auditor shall also report on any other matter relating to the accounts as may be prescribed, or on which the Provincial Government, the Board or the Assistant Commissioner concerned, as the case may be, may require him to report.] (Substituted by Madras Act X of 1946).
- Rectification of defects and irregularities disclosed in audit and order of surcharge against trustee.

 The Provincial Government shall send to the Board a copy of every audit report relating to its accounts, and it shall be the duty of the Board to remedy any defects or irregularities pointed out by the auditor and report the same to the Provincial Government.
- (2) The Board or the Assistant Commissioner shall send a copy of every audit report relating to the accounts of a math, temple or specific endowment, to the trustee thereof, and it shall be the duty of such trustee to remedy any defects or irregularities pointed out by the auditor, and report the same to the Board or the Assistant Commissioner, as the case may be.

- (3) The Assistant Commissioner shall forward to the Board a copy of every audit report received by him under clause (c) of section 46, and the report, if any, of the trustee made under sub-section (2), together with such remarks as the Assistant Commissioner may wish to make thereon.
- (4) If, on a consideration of the report of the auditor along with the report, if any, of the trustee, the Board thinks that the trustee was guilty of misappropriation or wilful waste of the funds of the institution or of gross neglect resulting in a loss to the institution, the Board may, after giving notice to the trustee to show cause why an order or surcharge should not be passed against him and after considering his explanation, if any, by order, certify the amount so lost and direct the trustee concerned to pay such amount personally within a specified time:

Provided that if in respect of any expenditure or dealing with trust property, the trustee had obtained the directions of the Board or of the Assistant Commissioner concerned and had acted in accordance with such directions, he shall not be held responsible.

- (5) The Board shall forward a copy of the order under sub-section (4) with the reasons for the same, by registered post to the trustee concerned.
- (6) The trustee aggrieved by such order may, within three months of the receipt of the order, appeal to the Provincial Government to modify or set aside the order and the Provincial Government may pass such orders thereon as they may deem fit.
- (7) The order of the Provincial Government on an appeal under sub-section (6) shall be final and shall not be liable to be modified or cancelled in a Court of Law.
- (8) The sum specified in the order of surcharge shall be paid within the time specified in such order, unless the trustee has appealed to the Provincial Government to modify or set aside the order and has obtained an order for stay.
- (9) An order of surcharge under this section against a trustee shall not bar a suit for accounts against him except in respect of the matter finally dealt with by such order.

(10) The Collector of the district in which is situated any property of the trustee from whom an amount by way of surcharge is recoverable, shall, on a requisition made by the President of the Board, recover such amount as if it were an arrear of land revenue and pay the same to the Board.] (Substituted by Madras Act X of 1946.)

48 A. Notwithstanding any provisions to the contrary

Audit of accounts of maths, temples, etc., for which schemes have been settled. contained in any scheme settled or deemed to be settled under this Act, the audit of the accounts of every math, temple or specific endowment shall be made in accordance with the provisions of this Act.] Substituted by Madras Act X of 1946.)

48-B. All

Public officers to furnish copies of or extracts from certain documents. public officers having custody of any record, register, report or other document relating to a math or temple or any property thereof or a specific endowment shall furnish such copies of or extracts from the

Assistant Commissioner.] (Substituted by Madras Act X of 1946.)

Scope of Sections 45-47.—Sections 45-47 apply to both hereditary and non-hereditary endowments.

S. 45 provides for the regular audit of trustees' accounts by a certified auditor.² This Section enacts a provision analogous to the first portion of section 13 of Act XX of 1863.³

The Select Committee said:-

"The original Bill provided that trustees should get their accounts audited by certified auditors. Where the auditors have to look for payment to the persons whose accounts they audit, it is not possible to expect thorough independence. We have therefore unanimously decided in favour of audit conducted by an agency appointed and controlled directly by the Government."

Statement of Objects and Reasons.
 Ibid.

(3) See Ibid.

(4) Report of Select Committee.

Trustees are bound to keep separate accounts of their dealings with the trust property and with their private property and to maintain accounts of all loans taken from one property for the benefit of the other. Where the question is as to the ownership of the properties purchased by the trustee,

English Law .- The English Act as well as this act gives specific inquisitorial and administrative powers to the Commissioners. The first of these classes of powers includes the power of making inquiries and the provisions as to accounts, whereby the trustees of every charity subject to the jurisdiction are required to render annual accounts, and transmit a copy thereof to the Commissioners.1

Even where trustees are invested with an uncontrolled discretion, they are liable to render accounts to the Commissioners.2

Appointment of auditors —It was not clear as to who should appoint auditors under S. 45 and to whom the report is to be submitted under S. 46 in cases of temples, for which specific provisions are made by schemes settled under S. 92 of the Code of Civil Procedure and according to which schemes the appointing authority is not the Local Government, and the persons to whom the auditor's report is submitted are not the persons indicated in S. 46. (See now S. 48-A added by Madras Act X of 1946.)

Sec. 46-English Law.-Under S. 44 of the Charitable Trusts Amendment Act, 1855, also trustees are bound to prepare annual accounts and transmit them to the Charity Commissioners, and in the case of parochial charities, "to the churchwarden or churchwardens of the parish or parishes with which the objects of such charities are identified." (Eng. Charitable Trusts Act, 1855, S. 44.)

Sec. 47.-S. 47 has been so worded as to make it clear that the audit should be more than a mechanical one. (Report of Select .Committee).

CHAPTER V.

TEMPLES.

49. The provisions of this chapter shall not apply to excepted temples or the Chapter not to apply to excepted temples. trustees thereof. 1 (Omitted by Madras Act X of 1946.)

and it is not known that the purchase-money came from private funds, the properties will be held to belong to the trust. Where it is clear that the funds of the trust and private funds of the trustee have not been kept distinct in the accounts but have been mixed up together, the onus is upon the trustee to prove that the property purchased by him belongs to him and not to the trust. Subbaraya Chetty v. Subramania Iyer, 48 I.C. 833=(1918) M.W.N. 786.

A trustee is not bound to invest the funds of the temple at the direction of the Committee. Sundara Rama Sastri v. Anantha Krishna Naidu, 38 I.C. 695=5 L.W. 672.

(3) See S. 75 infra and the notes thereunder.

Charitable Trusts Act, 1855, S. 44.
 In re Gilchrist Educational Trusts, (1895) 1 Ch. 367.

Trustee to be Hindu.

50. No person may succeed, or be appointed, to the office of trustee of a temple unless he professes the Hindu religion.

Sec. 50-Practice of English Courts .- Even in England, the practice is, where the object of the charity trust is exclusively connected with any one particular religious sect, the Court or Com-

missioners will appoint trustees of that particular sect. 1

Necessity for the section .- This section is intended to avoid such positions as are created under a recent ruling of the Allahabad High Court, under which it was held that a Mahomedan Mali could be one of the pujarees of a Hindu temple and could be entitled to continue his right acquired by custom, and also that the rights of receiving offerings and performing the duties of pujaree may be connected and a Mahomedan pujari may be entitled to both.2

(2) Bobu v. Seekha, A.I.R. 1923 All. 165.

In the course of the judgment Justice Stuart said: -- "This appeal raises some interesting points. It relates to rights to officiate as pujaris at the temple of Sitla at Farahampur Kalesharman. * * * The temple in question is of some antiquity. The learned Munsif who heard the original suit stated in his judgment that according to the Allahabad Gazetteer this temple was four thousand years old. I have been unable to trace a quotation that the temple is four thousand years old, but it is referred to at page 87 of the Gazetteer as one of the old temples in the district, and it is a place where three fairs are held every year to which a large number of persons go. It is established on the facts that connected with this temple are certain families of malis, and, it is found on facts that for very many years certain families of malis who are Hindus and certain families of malis who are Muhamedans, have both officiated as pujaris in this temple which is undoubtedly a indu temple. The lower Courts have gone on to find that they have so officiated without any real objection being taken either by Hindus or Muhamedans. Apparently Hindu worshippers have, in many instances, willingly accepted the ministrations of the Muhamedan malis. It is probable (one can only conjecture in matters of this nature) that whoever were the original pujaris of the temple, there were attached to this temple, (as is usually the case) certain families of the mali caste who supplied the flowers for use in the temple, and, that as years went on, these malis united the functions of pujaris with the functions of malis, and that some of them became Muhamedans very likely during the period of the Muhamedan domination of Kara. It would appear that in spite of certain of these malis becoming Muhamedans, they continued to take their share of the pilgrim offerings, and even to officiate in the temple.

The finding of fact of the Courts below must be examined carefully. They are that Muhamedans have taken charge of pilgrims who come to the

temples; that Muhamedans have received offerings of pilgrims who have come to the temples; that Muhamedans have even performed the ceremonies of laying hands on the pilgrims coming to the temples, and that this habit has continued for a very large number of years. Accepting these findings of fact I come to the grounds of appeal. * * *

⁽¹⁾ In re Norwich Charities, 2 M. & C. 275. See also S. 54, Cl. (2) infra.

51. ["(1) The number of non-hereditary trustees for a temple shall be fixed by the Assistant Commissioner except in respect of temples specified in a list prepared and published by the Board from time to time in the prescribed manner. In respect of the temples specified in such list, the Board shall fix the number of non-hereditary trustees:

Provided that the number of non-hereditary trustees shall in no case exceed three.

(2) Non-hereditary trustees shall be appointed by the Board in respect of the temples specified in the list referred to in sub-section (1) and by the Assistant Commissioner in respect of other temples. In making such appointments, the Board or the Assistant Commissioner, as the case may be, shall have due regard to the claims of persons belonging to the religious denomination for whose benefit the temple concerned is chiefly maintained."] (Sub-sections (1) and (2) substituted by Madras Act V of 1944).

[&]quot;The next ground is that the very idea of a Non-Hindu entering the consecrated part of a temple is obnoxious to Hindu sentiment and inconsistent with Hindu religion. This ground conflicts with the findings of fact, because, on the findings of fact, the Hindus who attend this temple do not object to Muhamedans performing the functions which they claim the right to perform.

[&]quot;The next ground is that any association or mixing up of Muhamedans with Hindus or sharing in the offerings is of no legal consequence and cannot confer any right on the defendants to officiate as priests.

[&]quot;Now it must be rembered that malis are shudras. There is very little difference between Kachis, Muraos and Malis and the status of the Malis is that of the Kachi. It is a superior shudra, not an unclean shudra, a clean shudra performing clean work and in no way a person to be despised, but nevertheless a shudra. It is a well-known fact that when shudras become Muhamedans it frequently happens that their social relationship with Hindu shudras remains much as it was, and, in such cases, it is much more a question of custom than a question of what is laid down by writers on the Hindu Law. As a matter of fact there is nothing as far as I know in the Hindu sacred writings which in any way touches on this subject. It is impossible to decide a question like this on a priori principles, that it is impossible for a non-Hindu to officiate in a temple such as the temple in question. What has to be looked at is what has been the usage in the past. I admit the position is peculiar.

[&]quot;The duties of the pujari appear to be confined to reciting some more or less colourless words and mainly to collecting the offerings and being in the temple in such a manner that the worshipper will feel that he has really made a pilgrimage to a shrine and offered up prayers which the sanctity of the shrine (the personality of the pujari being a matter of no importance) is likely to cause to be successful". See A.I.R. 1923 All. 165 at 166.

- (3) A non-hereditary trustee shall hold office for five years from the date of the order appointing him, unless in the meanwhile he is removed or dismissed or his resignation is accepted, by the [Assistant Commissioner]1 or he ceases otherwise, to be a trustee.
- [(4) Every non-hereditary trustee lawfully holding office on the date of commencement of this Act shall be deemed to have been duly appointed trustee under this Act on such date, but shall be entitled to hold office only for one year from such date.] (Sub-section (4) omitted by Madras Act V of 1944.)

Scope of Section .- Sub-clause (1) empowers the Committee to fix the number of non-hereditary trustees for any religious endowment subject to a maximum of three.

Sub-clause (2) empowers the Committee to appoint non-hereditary trustees of religious endowments, and sub-clause (3) limits their term of office to five years.

Sub-clause (4) was necessary as the old Act of 1863 had to be repealed altogether and as provision had to be made for the continuance in office of such non-hereditary trustees of religious endowments as were in existence at the commencement of the Act.2 (This sub-clause is now omitted by Madras Act X of 1946.)

The Select Committee have drawn prominent attention to the desirability, in making appointments of non-hereditary trustees, of giving preferential consideration to the claims of the community specially interested in the temple concerned.3

Appointment of New Trustees .- Independently of the provisions of this Act or of the English Charitable Trusts Acts, there is the inherent jurisdiction of the Court to appoint trustees.4

It has been held, even prior to the passing of this Act, that a power to appoint an additional trustee, if not in variation of the scheme of management of the temple, is vested in the Temple Committee as the successor of the Board of Revenue and is inherent in their power of general superintendence. Where no person is deprived of his freehold office a Temple Committee is not bound to show that the appointment was for just and sufficient cause. The only limit to their discretion is by an analogy to S. 49 of the

Substituted by Madras Act V of 1944.
 Statement of Objects and Reasons.
 Report of Select Committee.

⁽⁴⁾ Dodkin v. Brunt, L.R. 6 Eq. 580.

Trusts Act. A civil court has jurisdiction to decide if this discretionary power has been properly exercised.1

Jurisdiction of Commissioners-English Law .- The Charity Commissioners have, subject to certain restrictions,2 jurisdiction similar to that possessed by judges of the Chancery Division sitting at Chambers, or by County Courts,3 to make orders appointing trustees of charities and vesting in them the charity estate.4

Under these powers they may appoint additional trustees.3

Incidental Powers of Commissioners .- The Charity Commissioners have also jurisdiction to make orders for the appointment or removal of trustees6 or other officers7 of any charity or relating to the assurance, transfer, payment or vesting of any estate belonging to a charity, or entitling the official trustees of charitable funds8 or any other trustees to call for a transfer of and to transfer any stock belonging to such estate; or for the establishment of any scheme9 for the administration of a charity.10

Principles on which Court acts when appointing. [Cl. (2)]-With regard to the mode in which the Committee exercises its discretion in appointing new trustees, it is to be observed that it is not a mere arbitrary discretion, but one in the exercise of which the Court is guided by some general rules and principles, of which the following may be cited as the most important.

First—In the selection of a person for the office, the appointing authority will have regard to the wishes of the author of the trust, if expressed in, or plainly deduced from, the instrument creating the trust.

(3) As to the jurisdiction of the Court, see Halsbury, Vol. IV, pp.

265, ct seq. (4) Charitable Trusts Act, 1860 (23 & 24 Viet. c. 136), S. 2; Hals-

bury's Laws of England, Vol. IV, pp. 267—270.

(5) Re Burnham National Schools (1873) L.R. 17. Eq., p. 246.

(6) Charitable Trusts Act, 1860, S. 2—The Commissioners may not remove a trustee merely on account of his religious belief (Charitable Trusts Acts, 1860, S. 4.)

(7) Charitable Trusts Act, 1860, S. 2.

(8) Charitable Trusts Act, 1860, S. 2.—The Commissioners may not remove a trustee merely on account of his religious belief (Charitable Trusts Act, 1860, S. 4.)

(9) Charitable Trusts Act, 1860, S. 2 .- A copy of the instructions issued by the Charity Commissioners will be found in Tudor, Law of Charities

and Mortmain, 4th ed. at p. 960.

(10) Charitable Trusts Act, 1860, S. 2.—The jurisdiction exercisable by the Commissioners under this section is not excluded or impaired by similar

⁽¹⁾ Thiruvengadatha Iyengar v. Ponnappa Iyengar, 38 (M. 1176=25 I.C. 965=28 M.L.J. 209. (3 M.H.C.R. 334; 21 M. 179; 17 M. 212; 5 M.H.C.R. 53; 6 M. 54, Foll.; 34 M. 375; 34 M. 333; 29 M. 534 Dist.). (2) See Charitable Trusts Act, 1860 (23 & 24 Vict. c. 136), Ss. 3—6.

Secondly—The committee will not appoint a person to be trustee with a view to the interest of some of the persons interested under the trust, in opposition either to the wishes of the founder or to the interest of others.

Thirdly-The committee will have regard to the question whether the appointment will promote or impede the execution of the trust 1

The English practice is that in all cases where the object of the charity trust is exclusively connected with one particular religious sect the Court or Commissioners will appoint trustee of that particular sect.2

Where the charity is not exclusively connected with any particular sect, the Court will not place it under the supervision of trustees of any particular sect.3 In such cases the Court will appoint as trustees persons who are assumed to be the fittest for the main object of the trust, and equally fit for all its objects. rather than persons who are assumed to be, generally speaking, less fit for one of those objects.4

Discretion of Commissioners .- The Court will not interfere with the discretion of the Commissioners in selecting new trustees or removing existing trustees, except in cases of gross and palpable miscarriage of justice5 and the Commissioners may, if they think fit, make an order appointing or removing trustees, although the case may be one of a contentious character.6

Appointment under powers contained in the instrument of trust.—Appointments of new trustees by the Commissioners are generally less costly than when effected under a power in the instrument of foundation or by the Court. In consequence of this the Commissioners often make appointments under their statutory powers, notwithstanding the existence of a power of appointment which might be exercised.7

Practice of Commissioners.—When appointing trustees on the settlement of a scheme, the practice of the Commissioners is, where

powers contained in private Acts of Parliament and decrees and orders of

the High Court containing directions that the same shall only be exercisable by or with the sanction of the Court. (Charitable Trusts Act, 1862, S. 1).

(1) Turner, L.J., in re Tempest, L.R. 1 Ch. 485; Chileott, p. 66.

(2) In re Norwich Charities, 2 M. & C. 275.

(3) Attorney-General v. St. John's Hospital, Bath, L.R. 2 C.D. 554; Attorney-General v. Clifton, 9 Jur. N.S. 939; In re Stafford Charities, 3 Jur. N.S. 1191; Attorney-General v. School 8 N. L. 6405.

⁽⁴⁾ In re Ilminster School, 8 H.L.C. 495. (5) See In re Burnham National Schools, L.R. 17 Eq. 241; In re Hacney Charities, 34 L.J.Ch. 169 (Not F.)

(6) See S. 5 of Charitable Trusts Act, 1860.

(7) See Tudor's Law of Charities and Mortmain, 4th ed., p. 595.

necessary, to introduce a representative element, and to arrange that the representative element shall constitute a majority of the trustees. In framing new schemes they sometimes increase the number of the trustees and sometimes reduce it.

Provision is also frequently made for ex-officio and co-optive trustees.²

The Hindu Religious Endowments Board framed a scheme under S. 57 of the Act for the management of a temple and appointed the appellant the trustee for life. The scheme further provided that the descendants in the male line of his father should have preferential treatment in the appointment of trustees. There had never been a hereditary trustee for the temple. The appellant, however, had done much for the temple and spent large sums for repairing and rebuilding the temple. Held, that though the appellant was the most suitable person to act as trustee, yet he could not be appointed trustees for life or for any period beyond 5 years as provided in S. 51 (3) of the Act and the scheme should accordingly be amended. It would, however, be open to the Board to reappoint the appellant for a further period of 5 years if he continued to be physically fit and able to carry out the duties of the office. 56 L.W. 497=A.I.R. 1943 Mad. 730.

Secs. 51 (4) and 75: Scope and effect of.—Where a right to hold the office of trustee of a Devasthanam for life has been secured to a party under a scheme framed by the High Court in a suit under S. 92, Civil Procedure Code, prior to the Madras Hindu Religious Endowments Act, such a right cannot be held to be taken away by S. 51 (4) of the latter Act, (now repealed) reading S. 51 (4) along with S. 75. 1937 M.W.N. 317—45 L.W. 653—A.I.R. 1937 Mad. 594.

52. [The trustee of a temple (or a specific endowment attached thereto)³ shall be bound to obey all orders issued under the provisions of this Act by the Board (its President or by the Assistant Commissioner.)⁴

"All orders"—Omission of the word "lawful".—The original Bill of 1922 contained the words 'lawful orders'. An amendment was proposed for the omission of the word "lawful". The member in moving the amendment said: "No purpose will be served by having the word 'lawful' in this clause. For, when an order is not

⁽¹⁾ See Encyclopaedia of Forms, Vol. III, pp. 478, 479; Tudor's Law of Charities and Mortmain, p. 973.

⁽²⁾ Ibid.
(3) Substituted by Madras Act X of 1946.
(4) Substituted by Madras Act V of 1944.

lawful, the trustee of the temple is -not allowed to contest its legality. I know that there is clause 47 (sec. 53 of the present Act) which says that an appeal is allowed to the Board in certain cases. But that appeal relates to an appeal against an order of dismissal, removal or suspension consequent on the wilful disobedience of the lawful orders issued under the provisions of the Bill. So the whole question turns upon this: Supposing an order is communicated to the trustee by the committee, and the trustee feels that the order is wrong. Still he dare not disobey the order; for if he disobeys it, under section 53, cl. (3) he may be dismissed, removed or suspend-If he is dismissed, removed or suspended, no doubt he can appeal, but supposing in appeal the committee thinks the order is right, where is he to go? Therefore the trustee is bound in the first instance to obey orders, and there is no appeal against that We find that in Schedule II appended to the Bill, clause 46 (section 52) is not included in those clauses in respect of which an appeal is allowed either to the Committee or the Board or to the Court. I should therefore think that practically the effect of the order will be a lawful order and there is no meaning in saving 'lawful orders'. The amendment was accepted, and the word 'lawful' was omitted. It is rather difficult to follow the reasoning of the Honourable Member contained in the remarks cited above. It is clear, it was not the intention of the Honourable Member that the trustee shall be bound to obey all orders of the Board or Committee or its President, however unreasonable they may be, or however absurd they may be. See Proceedings in Council). It goes without saying that any order passed by any authority, whether in its judicial or administrative capacity, must conform to the well established rules of natural justice and broad principles of equity. orders must be such as fall within their competence as superintending authorities of the endowments concerned. (See Proceedings in Council.)

In this connection it may be noted that under the next section it is only the wilful disobedience of lawful orders issued by the Board or Committee that can afford a ground for dismissal. So, when an appeal is made to the court under sub. cl. (3) of S. 53, it would be competent to the court to enquire into the questions whether the orders were lawful and whether the disobedience was wilful. It may also be noticed that under section 40, a trustee in administering the affairs of an endowment should act in accordance with the lawful directions of a competent authority.

Further, the section states that the trustee of a temple is bound to obey all orders issued under the provisions of this Act, (1) by the Board or (2) the Committee or (3) the President of such Board or (4) the President of such Committee. What is he to do

in case of conflict between any two or more of such orders? Whose order should have precedence, is not indicated by the section.

- Suspension, removal and dismissal of non-hereditary trustees.

 (1) The Board in the case of a temple specified in the list referred to in sub-section (1) of section 51 and the Assistant Commissioner in the case of any other temple, may by order suspend, remove or dismiss any non-hereditary trustee—
- (a) for persistent default in the submission of budgets, accounts, reports or returns, or
- (b) for wilful disobedience of lawful orders issued by the Board or its President, or by the Assistant Commissioner, or
- (c) for any malfeasance, misfeasance, breach of trust, or neglect of duty in respect of the trusts, or
- (d) for any misappropriation of, or improper dealing with, the properties of the temple of which he is trustee, or
- (e) for unsoundness of mind or other physical infirmity which unfits him for discharging the functions of a trustee.
- (2) When it is proposed to take action under subsection (1), the Board or the Assistant Commissioner, as the case may be, shall frame charges against the trustee concerned and give him an opportunity of explanation, of testing the evidence against him and of adducing evidence in his favour and pending the disposal of the charges framed may place the trustee under suspension and appoint a fit person to discharge the functions of the trustee. The order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge with the reasons therefor.
- (3) A non-hereditary trustee who is suspended, removed or dismissed by an Assistant Commissioner under sub-section (1) may, within three months of the date of the communication of the order of suspension, removal or dismissal, appeal to the Board against such order and the Board shall pass such orders on the appeal as it thinks fit.
- (4) Every order passed by the Board under sub-section (1) or under sub-section (3) and every order passed by the

Assistant Commissioner under sub-section (1) when no appeal is preferred under sub-section (3), shall be final and shall not be liable to be modified or cancelled in a Court of law.

- Suspension, removal and dismissal of hereditary trustees.

 The Board may by order suspend, remove or dismiss any hereditary trustee of a temple for any of the reasons specified in sub-section (1) of section 53.
- (2) The powers conferred on the Board by sub-section (1) shall be exercised by a committee of the Board consisting of not less than two Commissioners of whom the President shall be one.
- (3) When it is proposed to take action under subsection (1), the Board shall frame charges against the trustee concerned and give him an opportunity of explanation, of testing the evidence against him and of adducing evidence in his favour and pending the disposal of the charges framed, may place trustee under suspension and appoint a fit person to discharge the functions of the trustee. The order of suspension, removal or dismissal shall state the charges framed against the trustee, his explanation and the finding on each charge, with the reasons therefor.
- (4) A hereditary trustee who is suspended, removed or dismissed by the Board under sub-section (1) may, within three months of the date of the communication of the order of suspension, removal or dismissal, apply to the Court to modify or cancel the order of the Board. The order of the Court on such application shall be final.
- (5) Every order passed by the Board under sub-section (1) when no application is made under sub-section (4) shall be final and shall not be liable to be modified or cancelled in a Court of law.] (Sections 53 and 53-A substituted by Madras Act V of 1944).

Scope of section.—Clause 22 of the original Bill which corresponds to this section gave committees powers of punishment only over non-hereditary trustees. The present section (see S. 53-A) extends these powers to hereditary trustees also. This extension was thought necessary in the interest of efficient administration. The Act has provided adequately for appeals against orders

of punishment. It may, however, be pointed out that while a committee may remove or dismiss a hereditary trustee it has no powers under the Act to break the line of succession to the office. When a hereditary trustee is removed or dismissed by a committee, the next in the line of succession is entitled to succeed, though, if the circumstances referred to in S. 42 exist, the Committee may make an interim appointment.¹

Removal of trustees—Nature of Jurisdiction.—It is one of the functions of the Court to see that trusts are properly executed. As ancillary to this jurisdiction the law has always provided for the removal of trustee from his office, whenever the interests of the trust, demand such removal. Even the removal of the hereditary trustee is not beyond the jurisdiction of the court.²

It is no question of misconduct of the trustee or his punishment.³ The main point for consideration is the benefit of the institution and not the rights of the contending parties for management. "The trustee exists for the benefit of those to whom the donor has given the trust estate".⁴

The trustees' assertion of their right to treat the trust property as their private estate, and to apply the trust funds to their private purposes, would be sufficient to justify their removal from the trust. The Courts will not, however, be deterred from making a decree for removal of the trustee by the difficulties to be expected in carrying it out.

In Thackersey v. Hurbhum, Scott, J., said:—"I cannot allow an evil precedent to be established and the maladministration of a public trust to go without redress, because the wrong-doers are men of influence, leaders of the caste, able to persuade a number of private persons, members of the same caste, to throw a cloak over the abuse. The management of the temple can be conducted on the income of the accumulated fund alone if placed in safe hands. The worst consequence, if no offerings were made, would be the absence of a surplus. Surpluses, in the past, have not been

⁽¹⁾ Report of Select Committee.

⁽²⁾ Letterstedt v. Broers, (1884) L.R. 9 A.C. 371 at pp. 385-386.

When a person has been managing a public temple and its properties after his father for a long time, the inference is that the community has accepted him as his successor. Unless he is guilty of misconduct, he cannot be evicted from the temple or the management of its properties. Ghungar Mal v. Chander Shankar, 50 I.C. 523.

⁽³⁾ Letterstedt v. Broers, (1884) L.R. 9 A.C. 371.

⁽⁴⁾ Ibid; Lewin on Trusts, 1088.

⁽⁵⁾ Chintaman Bajagi Dev v. Dhondo Ganesh Dev, 15 B. 612.

⁽⁶⁾ Purappavanalingam Chetty v. Nullasivan Chetty, 1 M.H.C.R. 415. See also 1941 N.L.J. 625.

^{(7) 8} Bom. 432 (471).

much devoted to the charitable objects of the funds to which they were subscribed. It is evident, from the amount of the accumulated fund that very little has been dispensed in charity, and the increase of the temple store is not a very important object. The threatened consequence is not sufficient to deter the law from taking its course."1

Jurisdiction of the court only ancillary-Hereditary rights may be ignored in the interests of the trust-Hindu Law .- As the trustee exists for the trust and not the trust for the trustee, it follows that the courts have always the power to remove the trustee in the interests of the trust, irrespective of the fact whether the charges of misconduct of the trustee have been strictly proved or not.2

In Thandapani v. Subbaya,3 the Madras High Court held that where the office of trustee descends by hereditary succession, a trustee cannot be appointed from amongst the members of the family by selection, and then where some members of the family who held the office of trustee, were guilty of breach of trust and others of gross carelessness, the court held it desirable to add a respectable resident of the place in the management of the trust.4

When the matter came before the Judicial Committee for consideration in the recent case of Mahamed Ismail v. Ahmed5 his Lordship Amir Ali said in the course of the judgment:-

"Their Lordships cannot help thinking that the extreme proposition urged for on behalf of the appellants (i.e., that the court has no discretion but to give effect to the rule laid down by the founder in all matters relating to the appointment and succession of trustees) is based upon a misconception.

"The Mussalman Law, like the English Law, draws a wide distinction between public and private trusts. Generally speaking, in case of a wakf or trust created for specific individuals or a deter-

⁽¹⁾ In Thackersey Dewraj v. Hurbhum Nursey, 8 Bom. 432, 471. A trustee has a free hold in his office and the temple property is vested in him. He must manage the estates and control the Devasthanam. can, however, be removed from office for good and sufficient cause. Sundara Rama Sastri v. Ananthakrishna Naidu, 38 I.C. 695=5 L.W. 672.

If a shebait has placed himself in a position in which he can no longer

faithfully discharge the obligations of the office, it will be sufficient ground for removal. 48 I.A. 258=48 C. 1019.

(2) Letterstedt v. Broers, (1884) L.R. 9 A.C. 371 at pp. 385, 386.

(3) Thandapani v. Subbayya, 11 I.C. 728=21 M.L.J. 784. See also

⁹ M.L.T. 495.

⁽⁴⁾ Ibid. (5) 35 I.C. 30 at p. 34=14 A.L.J. 741=(1916) 1 M.W.N. 460=20 C.W.N. 1118=20 M.L.T. 110=18 Bom.L.R. 611=31 M.L.J. 290=24 C. L.J. 198=4 L.W. 269=9 Bur.L.T. 141=43 C. 1085=8 L.B.R. 517= 43 I.A. 127 (P.C.).

minate body of individuals, the Kazi, whose place in the British-Indian system is taken by the Civil Court, has, in carrying the trust into execution, to give effect, so far as possible, to the expressed wishes of the founder. With respect, however, to public religious or charitable trusts, of which a public mosque is a common and well-known example, the Kazi's discretion is very wide. not depart from the intentions of the founder or from any rule fixed by him as to the objects of the benefaction; but as regards management, which must be governed by circumstances, he has complete discretion. He may defer to the wishes of the founder so far as they are conformable to changed conditions and circumstances, but his primary duty is to consider the interests of the general body of the public for whose benefit the trust is created. He may in his judicial discretion vary any rule of management which he may find either not practicable or not in the best interests of the institution."

The principles laid down by his Lordship Ameer Ali, J., in the above case, though made with reference to a Mahomedan waki are equally applicable to Hindu Public Religious Endowments.

In this case,2 which was a suit under S. 92, C.P. Code, the court held that "the court has complete jurisdiction in arranging for the management of the trust to which the section applies, although it is the duty of the court to take into consideration such matters as the wishes of the founder (where these can be ascertained) and also the past history of the institution and the way in which the management has been carried on hithertofore. In the course of the judgment his Lordship Piggott, J., said:—"The Law applicable to suits under this section (C.P. Code, S. 92) is laid down in the case of Mahomed Ariff v. Ahmed.3 The Court has complete discretion in arranging for the management of a trust to which this section applies. No doubt it is the duty of the court to take into consideration such matters as the 'wishes of the founder' (when these can be ascertained) and 'also the past history of the institution and the way in which the management has been carried on hithertofore;' but the question which we have to determine is merely whether there has been a proper exercise of discretion on the part of the court below."

It is competent to the heir of a founder of the Religious or Charitable trust, in whom the trusteeship has vested owing to

⁽¹⁾ Dharam Das v. Sadho, 40 I.C. 177 (180-181). See also on this point, 51 Cal. 331 (333); 23 C.W.N. 138 (140); 41 M.L.J. 21 (30); 51 M.L.J. 457 (463); (1920) M.W.N. 168 (171); 24 C.W.N. 690 (692); 2 Bur.L.J. 208 (209); 28 Bom.L.R. 309; 43 Cal. 1085=43 I.A. 127; 31 M.L.J. 290 (P.C.).

^{(2) 41} I.C. 177 (180). (3) 85 I.C. 30=14 A.L.J. 741=31 M.L.J. 290 (P.C.).

the failure of the line of the original trustees, to create a new line of trustees.1

Removal of one trustee from a hereditary trusteeship does not act as a forfeiture, and his heir will come in his place personally if major or through a substitute, if a minor, as long as his minority lasts.2

Insertion of incidental provisions in orders .- The Commissioners may insert in any order incidental provisions not included in the application which they think expedient for carrying into effect the substantial objects of the application.3

Mohants and shebaits, removal of-Schemes for management .-The Courts have jurisdiction to deal with the managers of public Hindu temples, and, if necessary for the good of the religious endowment, to remove them from their position as managers.4 It is sufficient ground for removing a shebait from his office that in the exercise of his duties he has placed himself in a position in which the Court thinks that he can no longer faithfully discharge the obligations of the office.5 But a mere mistake on the part of the manager as to his true legal position, or a mere laxity of management on his part not accompanied by any fraud or dishonest misappropriation, does not of necessity afford a ground for removing him from his post of manager, and entrusting it to new hands. In such a case, the Court may appoint a committee to supervise and control him, and, if necessary, frame a scheme for the management of the temple. It does not make any difference that the office is a hereditary office.6

⁽¹⁾ Gauranga v. Sudevi, 41 I.C. 589=40 M. 612.
(2) Venkatachella v. Taluk Board, 34 Mad. 375=(1911) 1 M.W.N. 304=10 I.C. 301=21 M.L.J. 305. The descent of trusteeship of a temple from father to son when supported by corroborative evidence may establish a hereditary right to the office. Anantha Narayana v. Athimuthu, 25 I.C. 74=(1914) M.W.N. 385, referring to 7 Mad. 499. See also 38 M. 489. As to succession to trusteeship of a religious institution or shebaitship or Mahantship, see 1931 Bom. 170=32 Bom.L.R. 1687; 1932 A.L.J. 615=1932 All. 603; 1932 Cal. 791=37 C.W.N. 29=60 Cal. 452; 1933 Cal. 529; 1935 Lah. 545; 1936 Lah. 300; 1936 Cal. 215; 39 C.W.N. 1264; 41 C.W. N. 1=71 M.L.J. 740=1936 P.C. 318; 1936 Lah. 839=I.L.R. (1937) Lah. 538 (552); 1936 Lah. 251.

⁽³⁾ Charitable Trusts Act, 1869 (32 & 33 Vict. c. 110), S. 6.

⁽⁴⁾ Chintaman v. Dhondo, 15 B. 612.

⁽⁵⁾ Peary Mohun v. Monohar, 48 I.A. 258=48 C. 1019.

⁽⁶⁾ Annaji v. Narayan, 21 B. 556; Damodar v. Bhogilal, 22 B. 493. As to the framing of a scheme see Code of Civil Procedure, Ss. 92 and 93. No scheme should be framed under sections 92 and 93, C.P. Code in the case of a private endowment. Gopal Lal Sett v. Purna Chandra Basak, 49 I.A. 100=49 C. 459 (P.C.).

If a mahant denies the wakf nature of the property attached to the temples and sets up an adverse title to it, this alone is sufficient to render

Grounds for removal .- The Courts are empowered to remove trustees for misfeasance, breach of trust or neglect of duty, and the law does not recognize any difference in the powers conferred on the courts in respect of trustees, whether hereditary or selected.1

Failure to keep accounts and misapplication of funds will entail dismissal.2

A trustee of a religious institution is bound to maintain accounts3 and if the legislature requires it4 he is bound to submit the accounts to the authorities concerned.5

Assertion by trustees of their right to treat the trust property as their private estate and to apply the trust funds to their private purposes would be sufficient to justify their removal from the trust.4

Where land was given for a specific religious purpose in order that that purpose might be carried out in perpetuity for the benefit of the grantor's family, the representative of that family is entitled to step forth, when that purpose is neglected and the produce of the land is misapplied, to ask the court to prevent the misappro-

him an unfit person to continue in the office of the mahant and liable to removal on institution of proper proceedings for the same. Bawa Aindhia Das v. Jokhu Malik, A.I.R. 1923 Lah. 131. See also 1936 Lah. 839.

The head of a mutt holding certain Devasthanams and the properties attached thereto as a trustee is liable to removal for proper cause.

Nataraja Tambiran v. Kailasam Pillai, 44 M. 283=48 I.A. 1=39 M. L.J. 98=(1920) M.W.N. 371=25 C.W.N. 145=L.R. 2 P.C. 5=13 L. W. 301=57 I.C. 564=18 A.L.J. 1041 (P.C.).

^{(1) 2} Mad. 197=4 Ind. Jur. 280. See also 31 Mad. 212.
(2) 15 Bom. 612 (624)=2 Mad. 197 cited in 18 M.L.J. at p. 207;
18 Bom. 551; 31 Mad. 212. Charges of fraud and dishonesty made against the trustee of a charity must be established at the hearing of the case, and cannot be allowed to be reserved and proved subsequently in the course of taking accounts. 18 Bom. 551. Where the trust deed of a charity executed subsequently to the death of a testator under whole will, charity was established does not strictly conform to the provisions of the will, it is not the practice of the Court, when the discrepancy has been made by mistake, to visit the past consequences of the mistake upon the trustees. See 18 Bom. 551 (555) and cases referred to therein; see also Tudor, 3rd Ed. 303. A shebait cannot be allowed to take his stand upon the general law which allows one trustee to call for an account from a co-trustee as much for his own protection as for the preservation of the trust unless there is an instru-ment setting the rights and liabilities of shebaits inter se and authorising a shebait to call for an account from a co-shebait. Rangacharya v. Raman Acharya, A.I.R. 1928 All. 689.
(3) 18 M.L.J. 205=31 Mad. 212.
(4) Act XX of 1863, S. 4.

⁽⁵⁾ As the Temple Committee; 18 M.L.J. 205.
(6) 15 Bom. 612; see also 12 C.L.R. 370.

priation and to see that the income of the endowment is applied to its legitimate purposes.1

Putting trustee on terms. - In a proper case, the court instead of dismissing the trustee will retain him on certain terms. in Sivasankara v. Vadagiri, the Madras High Court held that though the trustee was guilty of misconduct, in the absence of any proved or deliberate dishonesty on his part, he might be directed to comply with certain terms and conditions, in default of which he may be dismissed.2

Similarly, in the case of a trustee of the Chidambaram temple, the High Court on appeal decreed that the suspension order be withdrawn on the terms that the trustee do file an undertaking with two sureties that he would restore certain missing property belonging to the temple, and that he would duly conform to the decision of the majority of the trustees as to the management of temple affairs.3

The court has jurisdiction to direct a competent person to appoint a trustee and to direct delivery of possession by the dismissed trustee to the person properly appointed.4 If there is no person competent to represent the trust the proper course is to appoint a receiver and direct delivery of possession to him. So long as a trustee is in possession whether before or after dismissal, he is liable to render accounts. A dismissed trustee is entitled to get a discharge and to be relieved of all obligations as a trustee by the court.

Dissensions among trustees -Dissension among trustees will also be a ground for their removal, if their continuance would be against the interests of the institution.6

Females .- In a Bombay case, Jenkins, C. J., in the course of the judgment in Dhuncooverbai v. Advocate-General said: "It is said her sex is a disqualification. Mr. Justice Tyabji thought on the evidence before him there was no improbability in the way of females being recognized as Mohants in the Sanjogee Biragee community, and with this view I agree."

In a recent Madras case, Justice Sadasiva Iyer held that "While sex is no disqualification for a woman to hold the office of the management of a religious trust, whether Hindu or Mussalman, such

^{(1) 14} Mad. 1 at p. 7.

⁽²⁾ Sivasankara v. Vadagiri, 13 Mad. 6 at p. 9. (3) Natesa v. Ganapathi, 14 Mad. 103. (4) 18 M.L.J. 205 (Case under S. 14, Act XX of 1863). (5) Ibid.

⁽⁶⁾ Letterstedt v. Brocrs, (1884) 9 A.C. 371 (386); see also Unedale v. Etrick, 2 Ch. Cas. 130.

^{(7) 1} Bom.L.R. 743 (749-750).

a disqualification exists in the case of the office of temple pujari or acharya purusha or other priestly office."1

It has however been held in a later case that "a custom allowing a woman to succeed as heir to a religious office and getting the duties thereof performed by proxy is not illegal."²

In another case, the Madras High Court has held that "there is no basis for the assumption that a minor, a female or a person unlearned in the *Vedas* would lose the right to service in the temple by reason of such infirmity; the onus would be on the *dharmakarthas* to prove any disqualification."

Custom excluding females—Family arrangement.—Where the members of a joint Hindu family, while dividing the family properties agreed that the charities should be managed by the head of the family in each branch for the time being, and where on the death of such a member his widow claimed to succeed him in the management as against a male descendant of the founder by one of his grand-daughters. Held, that the language of the agreement clearly pointed to the intention that the management should be in the hands of the male heads and not in the hands of females, and that the widow could not claim to manage the charity even though it appeared that some females had previously asserted the right.⁴

Females, unchastity of —A Hindu widow after she becomes a shebait does not forfeit her rights as such shebait as soon as she lapses from the path of virtue and honour.⁵

Hereditary trustees.—The Civil Courts have power to remove trustees for misfeasance, &c, and it does not recognise any difference in respect of trustees whether hereditary or elected.⁶

⁽¹⁾ Sundarambal v. Yogavanagurukal, 38 Mad. 850=23 I.C. 73=26 M.L.J. 315=(1914) M.W.N. 286=1 L.W. 276.

⁽²⁾ Ramasundaram Pillai v. Savundarathammal, 27 I.C. 440=16 M. L.T. 423 (38 Mad. 850, not foll.; (1910) M.W.N. 445; 21 M.L.J. 490; 27 M.L.J. 100; 20 C.L.J. 183, Foll.) See also Kalee Churn v. Golabi, 2 C.L.R. 128 (Case under Act XX of 1863). As to right of widow of last holder of an impartible Zamindari to manage the endowment created by the last Zamindar out of his estate, see Srimant Raja v. Makerla, 20 Mad. 162=24 I.A. 73 (74)=1 C.W.N. 497=7 Sar. P.C.J. 205. See also 4 Ind. Jur. 529.

⁽³⁾ Thangirala Chiramjivi v. Raja Manikeya Rao, 25 I.C. 283=27 M. L.J. 179.

⁽⁴⁾ Krishnaswami Pillai v. Mookayi Ammal, 31 I.C. 35 (Mad.). See also 3 Cal. 766=13 C.L.R. 30=4 Sar. P.C. 411=7 Ind. Jur. 218=10 I. A. 32 (custom disqualifying females may be upheld by courts.)

(5) Abdul Gafur v. Uma Kantha Pandit, 24 I.C. 266 (Cal.).

⁽⁶⁾ Falcrudin v. Ackeni Sahib, 2 M. 197; 4 Ind. Jur. 280; see also 14 Mad. 103.

Long continuance of mismanagement.—English Courts have always restrained the improper application of charity funds, however long the misapplication may be.1

Mistake-Hostile title, claim of .- A mistake by hereditary trustee of a devasthan as to his true legal position does not of necessity afford a ground for removing him from his post of manager and entrusting it to new hands.2

There is, however, no hard and fast rule that every manager of a shrine, who has arrogated to himself the position of owner. should be removed from his trust; each case must be decided with reference to its circumstances.8

Negligence .- Neglect of trustee to carry out the trust and allowing the buildings of the trust institution to fall into disrepair will also be good ground for the dismissal of the trustee.4

Obstruction to carrying on of trust .- Obstruction to the carrying out of the resolutions of the majority of the trustees and opposition to the repair of the temple and closing the temple on important festival occasions causing interruption of public worship are acts which may entail dismissal.5

If some of several joint managers are obdurate and obstruct the smooth management of the trust the obdurate managers may be removed.6

Old age and infirmity. -Old age and infirmity and poverty coupled with inability to perform the duties of his office are good grounds for the removal of the trustee from his office.7

Poverty and insolvency. - Poverty may not of itself be as good a ground for dismissal.8 But the insolvent condition of a hereditary trustee coupled with want of prudence in managing his own affairs would be prima facie evidence of capacity to manage the trust.

(4) Ganapati Ayyan v. Savithri Ammal 21 M. 10 (11, 15).

(5) Natesa v. Ganapati, 14 M. 103 at p. 110. (6) Juggodumba Dossee v. Puddomoney Dassee, 15 B.L.R. 318 (324);

⁽¹⁾ See Tudor on Charitable Trusts, pp. 303, 305.

⁽²⁾ In this case the management of a devasthan being found to be lax and improvident, but not fraudulent and dishonest, the Court declined to remove the manager, but appointed a devasthan committee to supervise and control him, and framed a scheme for the management of the trust. (Annaji Raghunath v. Narayan, 21 B. 556). As to complete repudiation of trust see 36 M. 418 at pp. 424, 425.

(3) Damodar Bhatji v. Bhat Bhogilal Kassamdas, 22 B. 493 (15 Bom. 612 Ref. to).

Natesa v. Ganapati, 14 M. 103 (110).
(7) Thackersey Dewraj v. Hurbhum Nursey, 8 B. 432 (470, 471). (8) Aghore Nath Mukerjee v. Srimathi Kamini Debi, 11 C.L.J. 461.

A trustee in an impecunious condition though honest and has considerable position and influence in the locality, will be removed in the interests of the institution 1 In re Barker's Trusts, Jessel, M.R., observed:2 "A necessitous man is more likely to be tempted to misappropriate trust funds than one who is wealthy, and besides a man who has not shown prudence in managing his own affairs is not likely to be successful in managing those of other people.".

In England, bankruptcy is not necessarily³ though it is usually⁴ a ground for removal. Under this Act, a trustee shall cease to hold his office if he applies to be adjudicated or is adjudicated a bankrupt or insolvent.5

Repudiation of trust .- A complete repudiation by a trustee of the trusts on which he is bound to hold the properties committed to his charge for the benefit of others will work a forfeiture of the office, and even where no relief for removal has been asked he may be removed by the Court on the plaint being amended.6

Unsoundness of mind-Blindness. - Subsequent lunacy may be a ground for removal though it cannot operate as a forfeiture' so also blindness.8

Wilful default.-Where there is no wilful default but merely a misunderstanding, the Court will not necessarily visit the trustee with removal 9

Insufficient ground for removal .- A reason sufficient to prevent the appointment of a trustee is not necessarily a sufficient ground for removing an existing trustee.10

So, where no breach of trust has been committed, trustees, if otherwise unexceptional, are not removed merely on the ground of not possessing the required religious 11 or residential 2 qualification,

⁽¹⁾ Judgment of Abdur Rahim and Burn, JJ., in A.S. No. 68 of 1913, dated 1st November, 1916.

^{(2) (1875) 1} Ch.D. 43. See also remarks of Scott, J. in 8 B. 432 (471); see also Adams Trust, 12 Ch. Div. 634, cited in 8 Bom. 432 (470).

⁽³⁾ Archbold v. Charitable Bequests Commissioners for Ireland, (1849)
2 H.L. Cas. 440.
(4) Bainbridge v. Blair, (1839) 1 Beav. 495.
(5) See S. 54 (1) (b) infra.
(6) Ambalam Pakkiya Udayan v. Dartle, 36 M. 418 (424-425).

 ⁽⁷⁾ Nilakandan v. Sankaran, 20 M.L.J. 949 (950).
 (8) Konaran v. Junjan, 12 M. 307 (309) (Karnawan of a Malabar tarwad).

⁽⁹⁾ Attorney-General v. Cooper's Company, (1812) 19 Ves. 187 (192) =34 E.R. 488 (489).

⁽¹⁰⁾ A. G. v. Clapham, (1853) 10 Hare 540, 613 (trustees of a chapel).

⁽¹¹⁾ Baker v. Lee, (1860) 8 H.L. Cas. 495, 513. (12) A. G. v. Clarenden (Earl), (1811) 17 Ves. 491, 499.

or on the ground of temporary absence from the kingdom, or because they were appointed irregularly.?

Practice and Procedure, Cl. (2) .- If the manager of the Temple Committee sent proposals to dismiss a trustee to the other members and even before receiving replies thereto, he informed the trustee that he had been dismissed, it does not operate as a dismissal. Such a matter cannot be done merely by the circulation of papers without giving the trustee an opportunity to explain his conduct, and without enquiry.8

Removal of trustee—Practice of English Courts.—Where trustees of a charity exclusively connected with a particular religious sect adopt opinions differing from those entertained by that sect, the Court will remove them.4

Although certain facts may exist rendering the persons nominated improper persons to be appointed trustees of a charity it does not follow that when they have been appointed the Court will remove them. Thus where, upon their original appointment, the trustees ought to have been members of the Church of England and resident within a prescribed district, the Court refused to remove them upon these grounds.5

Although a trustee may be removed from administering a charity trust, it does not follow that he is not to be permitted to retain rights of nomination entrusted to him by the founder.6

Appeal—English Law —An appeal lies to the Chancery Division of the High Court against any order appointing new trustees7 but the Court will not interfere except in cases of gross miscarriage of justice.8

Application of sections 53 and 53-A to specific endowments.

53-B. The provisions of sections 53 and 53-A shall, so far as may be, apply to any specific endowment attached to a (Inserted by Madras Act X of temple. 1946).

Re Moravian Society, (1858) 4 Jur. (N.S.) 703.
 A. G. v. Cuming, (1843) 2 Y. & C. Ch. Case 139, 150, 151.
 Ponnambala v. Muthu Chettiar, (1916) 1 M.W.N. 18=33 I.C.

⁵²⁼³⁰ M.L.J. 619. (4) Attorney-General v. Pearson, 3 Mer. 413; Attorney-General v. Murdock, 2 K. & J. 571; Attorney-General v. Munro, 2 D.G. & Sm. 122.
 (5) Attorney-General v. Clighton, 9 Jur. N.S. 939; Attorney-General

v. Dewan, (Earl of), 15 Sim. 193.

(6) Ex parte Blackburne, 1 J. & W. 297; Attorney-General v. Corporation of Newbury, 2 H.L.C. 446.

(7) Charitable Trusts Act, 1860, S. 8.

(8) Re Burnham National Schools, (1873) L.R. 17 Eq. p. 246.

54. (1) A non-hereditary trustee Disqualifications of trustees. shall cease to hold his office if he-

- [(a) is sentenced by a criminal court to transportation or to imprisonment for a period of more than six months (such sentence not having been cancelled or reduced to a period of six months or less, or the offence not having been pardoned) provided that the Provincial Government may direct that such sentence shall not operate as a disqualification;] (Substituted by Madras Act V of 1944).
- (b) applies to be adjudicated or is adjudicated a bankrupt or insolvent; or
 - (c) ceases to profess the Hindu religion.
- (2) A hereditary trustee shall cease to hold his office if he ceases to profess the Hindu religion.
- (3) If a hereditary trustee becomes subject to any of the disqualifications described in clause (a) or clause (b) of sub-section (1), the [Board]1 may supersede him and appoint a fit person to administer the temple until the disability of the trustee ceases to exist or another trustee succeeds to the office.
- (4) The Board shall, in cases of dispute or doubt, determine whether a trustee is disqualified under this section and its decision shall be final [and shall not be liable to be modified or cancelled in a Court of Law. 12

"A trustee discharges very onerous functions and it is necessary that he should not be permitted to continue in office when he becomes subject to the disqualifications which would be sufficient to terminate membership on a committee, for example. (Statement of Objects and Reasons).

The Select Committee said .- "Clause 23 of the original Bill has been elaborated into this clause and the power of determining cases of doubt or dispute as regards disqualifications under the section has been given to the Board instead of the committee."
(Statement of Objects and Reasons.)

Fixing of standard scales of expenditure in temples.

55. Subject to the provisions of any scheme settled or deemed to be a scheme settled under this Act-

Substituted by Madras Act V of 1944.
 Added by Madras Act X of 1946.

- (1) the trustee of a temple may from time to time submit to the [Assistant Commissioner]¹ proposals for fixing the dittam or scale of expenditure in the temple and the amounts which should be allotted to the various objects or ceremonies connected with such temple or the proportions in which the income or other property of the temple may be applied to such objects or ceremonies.
- (2) The trustee shall publish such proposals at the temple and in such other manner as the [Assistant Commissioner] may direct together with a notice stating that, if within one month from the date of such publication, any objection or suggestion is received from any person having interest, the committee will consider such objection or suggestion.
- (3) After the expiry of the period fixed under subsection (2), the [Assistant Commissioner]¹ shall consider the objections or suggestions that may have been received and may pass such orders [as he thinks fit]¹ on the proposals.
- (4) The trustee or any person having interest may within six months of the date of the order passed by the [Assistant Commissioner]¹ under sub-section (3) either appeal to the Board against such order or institute in the Court a suit to modify or set aside the same.

If such an appeal is preferred or such a suit is instituted the Board or the Court shall give at the expense of the appellant or the plaintiff, as the case may be, notice of the appeal or of the institution of the suit to all the persons having interest either by personal service or where from the number of persons or any other cause such service is not reasonably practicable by public advertisement as the Board or Court may in each case direct.

- (5) Subject to the result of such appeal or suit as is referred to in sub-section (4) the order of the [Assistant Commissioner]¹ shall be final. The order of the Board on appeal shall be final.
- (6) The dittam or scale of expenditure for the time being in force in a temple shall not be altered by the trustee except in accordance with the procedure laid down in this section.

⁽¹⁾ Substituted by Madras Act V of 1944.

Section 55 provides for the varition, without the intervention of a Court of standards of expenditure in temple, or other institution, "dittams" as they are called. The Court can intervene only if there is a difference of opinion between the trustee and the Committee in this matter.

It was considered by the Select Commttee, that, in the matter of changing the dittam or established scale of expenditure in a temple, worshippers besides trustees and Committees should have a voice. The Select Committee have accordingly provided for an opportunity being given to them to submit objections or suggestions to the Committee before it passes orders. They will also along with the trustee have the right to appeal to the Board against the Committee's order. (Report of Select Committee).

Budgets of temples.

Sioner]² before such date and in such form as the Board may require, a budget showing the probable receipts and disbursements of the temple and the endowments connected therewith during the following year.

(2) Every such budget shall make adequate provision for the *dittam* or scale of expenditure for the time being in force and the due discharge of all liabilities in respect of loans.

(3) The [Assistant Commissioner]² may within such time after the receipt of the budget as the Board may fix, direct the trustee to make such alterations, omissions or additions in the budget as [he]² may think fit.

(4) The trustee may, within such time as the Board may fix, appeal against the order of the [Assistant Commissioner]² under sub-section (3) to the Board whose decision shall be final [and shall not be liable to be modified or cancelled in a Court of Law.]³

The Select Committee said.—"The submission of annual budgets by trustees to the Committee is an important step in the direction of ensuring ordered expenditure in temples. While we hold that it is unnecessary to require the sanction of the Committee before a trustee can proceed to act on a budget, we consider that the Committee should have power to check extravagance, enforce ceconomy, ensure compliance with the approved dittam and

See Statement of Objects and Reasons.
 Substituted by Madras Act V of 1944.

⁽³⁾ Added by Madras Act X of 1946.

insist on re-payment in due time of amounts borrowed. The right conferred on the trustee to appeal to the Board against the orders of Committees is, in our opinion, a sufficient safeguard against the misuse by Committees of the powers conferred on them under subclause (3). (Report of Select Committee).

Application of sections 55 and 56 to specific endowments.

[56-A. The provisions of sections 55 and 56 shall, so far as may be, apply to specific endowments attached to a temple.] (Inserted by Madras Act X of 1946).

Schemes for temples. Own motion or on the application of any person having interest that, in the interests of the proper administration of the endowments of a temple, a scheme of administration should be settled, the Board may, after consulting in the prescribed manner the trustee and the persons having interest by order settle a scheme of administration for the endowments of the temple.

Explanation.—The power to settle a scheme under this sub-section shall be deemed to include a power to settle a scheme for any specific endowment or endowments attached to a temple.

(2) A scheme settled by the Board under sub-section may contain provision for—

(a) fixing the number of non-hereditary trustees;

(b) removing any existing trustee or trustees, whether hereditary or non-hereditary;

(c) appointing a new trustee or trustees in addition to or in the place of any existing trustee or trustees, whether here-

ditary or non-hereditary:

Provided that where provision is made in the scheme for the removal of a hereditary trustee provision shall also be made therein for the appointment, as trustee, of the person next in succession who is qualified;

(d) associating one or more persons with the trustee or trustees or constituting a separate body for the purpose of participating or assisting in the whole or any part of the adminstration of the endowments connected with such temple;

(e) appointing or directing the appointment of a paid executive officer, who shall be a person professing the Hindu

religion, on such salary as may be fixed by the Board, to be paid out of the trust funds and defining the powers and duties of such officer;

- (f) defining the powers and duties of the trustee or trustees;
- (g) directing the appropriation of any surplus funds in accordance with the provisions of section 67.
 - (3) The Board may determine—
- (a) what the properties of the temple are and append to the scheme a schedule containing a list of such properties:

Provided that such determination shall not affect persons who are in hostile possession of any of the said properties;

- (b) what proportion of the endowed properties or interest therein shall be allocated to any particular object of the endowment.
- (4) The Board may, for good and sufficient cause, suspend, remove or dismiss any executive officer appointed in pursuance of a scheme settled under sub-section (1) or direct the removal of such officer.
- (5) The Board may at any time by order and in the manner provided in sub-section (1) modify or cancel a scheme settled under that sub-section.
- (6) Every order of the Board settling, modifying or cancelling a scheme under this section shall be published in the prescribed manner.
- (7) The trustee or any person having interest may within six months of the date of such publication institute a suit in the court to modify or set aside such order.

Subject to the result of such suit and subject to the provisions of sub-section (9), every order of the Board shall be final and binding on the trustee and all persons having interest.

- (8) Pending the framing of a scheme, the Board may appoint, a fit person to discharge all or any of the functions of a trustee and define his powers and duties.
- (9) Any scheme of administration settled by a court under this section or which under section 75 is deemed to be a

scheme settled under this Act may, at any time for sufficient cause, be modified or cancelled by the court on an application made by the Board or the trustee or any person having interest but not otherwise. [(Substituted by Madras Act X of 1946.)

Settlement of Scheme .- The Select Committee said :- "Even among non-excepted temples, there are institutions where the interest are so important or the funds handled by the trustee are so large that the settling of a special scheme of administration will be a more efficient form of control than the one exercised by a committee under the Act. We have provided for the contingency in this clause. The scheme should, we think, be settled by the Board in consultation with the committee, the trustees and other persons having interest in the temple. It is open, however, to the trustee or interested person to apply to the court to modify a scheme settled by the Board."1

(1) Report of Select Committee.

A scheme framed by the Hindu Religious Endowment Board in 1926 in respect of a non-excepted temple vested the management of it in a board of three trustees, one of them to be a member of a family which possessed a hereditary right to the trusteeship. In 1942 the Board modified the scheme. The modification provided that the Board should appoint any one of the trustees as the managing trustee for such period as it might deem fit, and it was empowered to entrust with such powers as it might deem fit and to remove him from such office for good cause on a question whether the modification was ultra vires the Board in that the Board had no power to appoint a non-hereditary trustee as managing trustee.

Held, that the Board had the power to appoint any trustee, whether hereditary or non-hereditary to be the managing trustee for a period and hence the modification was quite within its powers. (1946) 1 M.L.J. 133. In settling a scheme for an "excepted temple", the Board has no power to appoint or constitute a separate body of trustees for managing the temple under S. 59 (2) of Act of 1925. Having regard to the general scheme of the Act, it cannot be said that S. 59 (2) was not intended to confer special power on the Board in the case of a math but merely to make a special restriction when the power under S. 59 (1) is exercised with reference to a math. An "excepted temple" is clearly differentiated throughout the Act. 1935 M. W.N. 382=68 M.L.J. 722. It is not correct to hold that in an inuity under S. 57 of the Act the Board cannot deal with a question of disputed title. It may not always be possible to frame a scheme without coming to some conclusion as to the income available or as to the properties to be managed. Any view taken by the Board cannot of course affect third parties in hostile possession of the properties nor can it always be final even as against parties appearing before the Board. The Civil Court in which a suit is brought under S. 57 (3) cannot in any view decline to adjudicate on questions of title when raised before it. The suit being one filed in a Court of plenary jurisdiction, though it might arise out of the framing of a scheme by the Board, there is no sufficient justification for the Court to exclude questions of title and to decline to adjudicate on them. 46 L.W. 668=A.I.R. 1937 Mad. 750=(1937) 2 M.L.J. 368. A provision in a scheme framed by the Hindu Religious Endowments Board for a temple was Provisions as to schemes under this Act.—S. 57 provides that when a scheme has been settled under section 92, C. P. Code, that scheme is notwithstanding any provision of this Act which may be inconsistent with the provisions of such scheme, deemed to be a scheme settled under this Act. Such scheme may, however, at any time for sufficient cause be modified or cancelled by the Court on the scheme of the Board.

S. 57, cl. (2) states that the provisions of sections 92 and 93, C. P. Code, having no application to religious endowments for purposes mentioned in that section and, consequently except as provided by this Act no suit claiming any relief in respect of the management of a religious endowment can be maintained.

"Scheme"—Meaning of—English Law.—"Usually, when a scheme is spoken of in connection with a charity, what is meant is, not the instrument of foundation, but a document sanctioned by some properly constituted authority containing directions for the administration of the charity. In England previous to the passing of the Charitable Trusts Act, such schemes were made by the Court of Chancery only. They were made mainly in the three classes of cases: (1) where the directions contained in the instrument of foundation were ambiguous, imperfect of otherwise insufficient; (2) where the directions, though originally precise and complete had become, under altered circumstances, unsuitable to carry out the

as follows: "The said temple shall be under the control and management of a single trustee; and the present trustee Mr. S shall be first trustee under the scheme and the trusteeship shall continue in him and the other heirs of his father late C. So long as they pay an annual contribution of rupees three thousand which will be set apart for the thiruppani work of the temple and for the upkeep and maintenance of the temple walls and its premises." It was also found that the said S actually offered to endow a sum of Rs. 25,000 for establishing a thevaram patasala as an adjunct to the temple, and that this offer which was accepted by the Temple Committee and the Board was also one of the reasons for the appointment of S as trustee for life under certain conditions, and also for restricting the appointment of future trustees to the members of his family. Held, (1) that the effect of the provision in the scheme was really to transfer the office of trustee by the Board and the Committee to S in return for a present payment of Rs. 25,000 in cash and a promise to make an annual payment of Rs. 3,000; and such a transfer of the office of trustee for a monetary consideration, being opposed to public policy, could not be recognised as being in accordance with law; (2) that though in one sense the temple benefited by the appointment, since the benefit came in such a "questionable shape", the consideration of benefit could not prevail; (3) that appointments of the kind were not permitted by custom; and even if there were such a custom, it could not be recognised by law. (1938) 1 M.L.J. 517. Quaere.—Whether the Board has power to make an appointment of a hereditary trustee in a non-excepted temple? 47 L.W. 529=A.I.R. 1938 Mad. 713=(1938) 1 M.L.J. 517. See also (1938) 2 M.L.J. 987 cited under S. 62 and 56 L.W. 497.

general intention of the founder; and (3) where a scheme sanctioned by the Court itself had in like manner become unsuitable for that purpose."

Considerations which will weigh with Courts in framing Schemes.—In appointing new trustees and settling a scheme, the Court is entitled to take into consideration not merely the wishes of the founder, so far as they can be ascertained, but also the past history of the institution, and the way in which the management has been carried on heretofore, in conjunction with other existing conditions that may have grown up since its foundation. The Court has also the power of giving any directions and laying down any rules which may facilitate the work of management, and if necessary,

WORK OF THE BOARD UNDER THIS SECTION.—The following extract from the Report of the Commissioners shows the work done by the Board under this section:—

"The number of temples for which schemes have been already settled by Courts is comparatively small (about 250) compared with the number of institutions which were mismanaged and were really in need of improvement in their management and working. Besides trying to settle new schemes where necessary, the Board has to examine even the schemes already settled by Courts as they are often found to be defective, owing chiefly to the technical difficulties inevitably involved in the procedure adopted in the Courts which had to be guided by such evidence as parties presented in accordance with their own interests. The Board has, therefore, to find out the defects in the said schemes and formulate suggestions for amendment of the same with a view to remedy the defects and to make suitable changes with due regard to the provisions of the Hindu Religious Endowments Act, 1923 (Act. I of 1925), the machinery constituted under it-the Hindu Religious Endowments Board and a better class of temple committees than those that previously existed-and the principle enunciated by the High Court when the present Act was about to be passed. See 20 L.W. 687 (691, 692) that the Board coming into existence under it would be in a better position to deal with administrative matters connected with endowments than the Courts themselves. It was only after the close of the period under report that the Board decided to make a few applications for the amendment of existing schemes. It is absolutely necessary that in respect of almost all the 250 old schemes similar applications should be made but the Board's financial position has to be secured and stabilized before this task is undertaken. Cases where the settlement of schemes for the first time was found necessary naturally claimed prior attention.

"Action under the latter head was taken (a) either on receipt of regular and formal applications from private parties or (b) as a result of the investigations directed by the Board. The number of these two classes of cases dealt with during the period under report is 61 and 26, respectively. On the conclusion of the enquiries that ensued, the Board settled under sections 53 and 59 of the Act schemes of administration for 85 temples and 2 maths."

(1) Per Stirling, J., In re Mason's Orphanage v. London and North-Western Railway Co., (1896) 1 Ch. 54; and see sec. 29 of the Charitable Trusts Act, 1855.

(2) Mahomed Ismail Ariff v. Ahmed Moolla Dawood, 43 C. 1085 at pp. 1101, 1102.

the appointment of trustees in the future.1 Due consideration should however be given to the established practice of the institution and to the position of persons connected with it.2 It has been held by the Madras High Court that a court cannot interfere with the statutory powers conferred upon the Board or the members of a Committee so as to deprive them of their statutory functions, although it might frame a scheme conditional on legislative sanction being obtained for it. Mr. Justice Seshagiri Iyer, however, in the course of the judgment said:-"A Court has the power to administer a charitable or religious trust provided it does not unduly interfere with the visitor or the statutory body.4 There is general right possessed by a subject to ask a court's assistance to set right abuses and to have a scheme framed independent of the Statute."5

Jurisdiction of Commissioners under English Law .- Jurisdiction is given under the English law to the Commissioners to provisionally approve a new scheme for the administration of a charity in cases where, in the opinion of the Commissioners, the scheme as contemplated cannot be carried into complete effect otherwise than by Act of Parliament. However, neither the Courts nor the Commissioners have power to make a scheme in the case of a charity founded by Royal Charter or Act of Parliament and regulated according to the provisions of such Charter or Act.6

Jurisdiction of Court .- It is beyond the jurisdiction of the Court to sanction, without the consent of the existing governing body of a charitable trust, a scheme which ousts the governing body from its right of administering the trust, where the trust remains, and is capable of being effectuated, and no breach of trust is shown.7

Jurisdiction over Commissioners.—In a case where by scheme for the management of a charity, it was provided that any question affecting the regularity or the validity of any proceeding under the scheme should be determined conclusively by the Charity

⁽¹⁾ Mahomed Ismail Ariff v. Ahmed Moolla Dawood, 43 C. 1085, at

pp. 1101, 1102.

(2) Baldeopuri v. Gopaldas, 8 Bom.L.R. 756. Where a family has a right of worship with some emoluments attached to it, the Court may assign certain days for facility of worship and for the purpose of enabling such party to receive offerings offered (A.I.R. 1925 P.C. 139 and A.I.R. 1923 425, Rel. on); Goswami Sadanand v. Goswami Indra Nand, 23 I.C. 763=A.I.R. 1930 All. 383.

⁽³⁾ Sitharam Chetty v. Subramania, 32 I.C. 211 at pp. 215, 219=30 M.L.J. 29=19 M.L.T. 25=3 L.W. 43=39 Mad. 700. (4) Ibid.

⁽⁵⁾ Ibid.

Attorney-General v. Smart, 1 Ves. Sen. 72; Chilcott, p. 107; Charitable Trusts Act, 1853, S. 65.

⁽⁷⁾ Attorney-General v. Governors of Christ's Hospital, 65 L.J.Ch. 646; Chilcott, p. 107.

Commissioners the Court refused to issue a mandamus to the Commissioners to decide a question which had arisen under the provisions of the scheme, on the ground that the applicants had other alternative, convenient and effectual remedies by proceeding to have the question decided by action in the ordinary Courts.

Filling up of vacancies among officeholders or servants.

- **58.** (1) Vacancies amongst the office-holders or servants of a temple shall be filled up by the trustees in cases where the office or service is not hereditary.
- (2) In cases where the office or service is hereditary, the next in the line of succession shall be entitled to succeed:

Provided that, if there is a dispute respecting the right of succession to such office or service, or in cases where such vacancy cannot be filled up immediately, or where the person entitled to succeed is a minor without a legally constituted guardian fit and willing to act as such, or where the hereditary office-holder or servant is by reason of unsoundness of mind or other physical infirmity unable to discharge the functions of the office or perform the service, the trustee may appoint a fit person to discharge the duties of the office or perform the service, until another person succeeds to the office or service or the disability of the office-holder or servant ceases to exist, as the case may be.

(3) In making an appointment under the proviso to subsection (2), the trustee shall have due regard to the claims of members of the family, if any, entitled to the succession.

The Select Committee said.—"The indefiniteness of the existing law as regards the powers which trustees of temples may exercise over office-holders and servants therein, especially those possessing hereditary rights, has been a fruitful source of litigation hitherto. These clauses are an attempt to define these powers in a clear manner. The trustee is given full disciplinary powers over all classes of servants, both hereditary and non-hereditary. He cannot, however, make any, except interim, appointments to hereditary offices and even this he can do only in the circumstances and under the conditions set forth in sub-clauses (2) and (3)." (See Report of Select Committee).

⁽¹⁾ Queen v. Charity Commissioners, (1897) 1 Q.B. 407; 66 L.J. Ch. 521.

59. [The Board or the Assistant Commissioner may require the trustee of a temple or any Trustees to furnish accounts, etc., to the Board or Assistant specific endowment attached thereto or his agent to submit to the Board or to the Commissioner. Assistant Commissioner, as the case may be, such accounts, returns, reports or other information relating to the administration or management of the temple or the endowment in his charge, its funds, property or income or moneys connected therewith or the application thereof, at such time and in such manner as the Board or the Assistant Commissioner may require.] (Substituted by Madras Act X of 1946.)

Scope of section.—S. 59 embodies in an elaborated form the substance of the second sub-paragraph of section 13 of the old Act² but throws the obligation on the trustee.2

Practice of English Court .- In cases where the liability to render accounts, etc., is disputed, under the English practice, the question is usually raised on a motion by the Commissioners to commit the parties so refusing for contempt of Court.3

Inspection by President, Commissioner or Assistant Commissioner.

60. The President of the Board or any Commissioner or Assistant Commissioner in respect of his division or area may inspect all movable and immovable property belonging to and all records, correspondence,

plans, accounts and other documents relating to any temple or specific endowment attached thereto and the trustee of such temple or endowment and all officers and servants working under him, his agent and any person having concern in the management or administration thereof shall afford to the President, the Commissioner or the Assistant Commissioner assistance and facilities as may be reasonably required and produce them for inspection.] (Substituted by Madras Act X of 1946).

Sec. 60 (a) of the old section-Applicability.-S. 60 (a) (before Amending Act X of 1946) is not confined in its application

⁽¹⁾ Act XX of 1863.

⁽²⁾ Statement of Objects and Reasons.

(3) In re Sir R. Peel's School at Tamworth, L.R. 3 Ch. 545; In re St. Bride's Fleet Street, L.R. 35 C.D. 147 (N.); In re Gilchrist's Trusts, 64 L.J. Ch. 298. As to whether a member of Parliament can be committed for the Chilesten of the Ch ted for contempt, see In re Sir R. Peel's School Case, Chilcott, p. 17.

to a temporary absence of the temple committee, but also applies when the committee contemplated by that sub-clause had never been appointed at all. The words of S. 60 (a) are quite general and provide for the exercise of the right by the Board and its president in all cases where a committee such as is referred to in S. 43 (2) has not been constituted or is not in existence. M.W.N. 769-1943 Mad. 222-(1943) 1 M.L.J. 496. under the Act before Amendment of 1946).

Exercise of the rights and Powers and dis-charge of the duties of a Committee by the Board in certain cases.

[(1) Where for any local area or any class or classes of institutions in any local area, a committee has not been constituted or is not in existence, the Board and its President may, notwithstanding anything contained in this Act, exercise all or any of the powers and perform all or any of the duties of the committee and its president respectively, until a committee is constituted

or comes into existence.

(2) The provisions of this Act relating to appeal from the orders of a committee to the Board or the approval of the actions of a committee by the Board shall not apply to the orders or actions of the Board acting under sub-section (1).] (Omitted by Madras Act V of 1944.)

CHAPTER VI.

"[MATHS.]

261. (1) The trustee of every math and specific endowment attached to a math shall in each vear submit to the Board before such date Submission o budgets and annual acand in such form as the Board counts. require-

- (a) a statement of the actual receipts and disbursements of the previous year; and
- (b) a budget showing the probable receipts and disbursements of the following year.
- (2) The budget of every math shall make adequate provision for the dittam or the scale of expenditure for the time

Substituted by Madras Act X of 1946.
 Secs. 61 and 61-A Substituted by Madras Act X of 1946.

being in force and the other customary expenses of the math and for the due discharge of all liabilities in respect of the debts binding on the math.

- (3) Every such budget may, with any surplus which may be available after providing for the matters referred to in subsection (2), make provision for such religious, educational or charitable purposes not inconsistent with the objects of the math as its trustee may deem fit.] (Substituted by Madras Act X of 1946.)
- (4) The Board may make such suggestions as it may think fit in regard to the various items in the budget including those relating to the surplus.
- Appointment of a math, the trustee of the math shall, when required by the Board, appoint a competent person as manager and report the name of the person so appointed to the Board.
- (2) The manager appointed under sub-section (1) shall in addition to the trustee be responsible for the due submission of the registers, accounts and budgets of the math, to the Board and also for the performance of other statutory duties imposed upon the trustee under this Act.] (Substituted by Madras Act X of 1946).

Scope of Ss. 61-65. - Referring to Ss. 61-65, the Select Committee (to the Original Bill of 1926) said:-"S. 61 provides for the submission to the Board of the Budgets and annual accounts of maths and excepted temples. The submission of an inventory under Ss. 38 and 39 and the getting of their accounts audited by auditors appointed by the Government complete, roughly speaking, the obligations which these institutions will under the Bill be subject to in normal times. And it has to be remembered that neither the Board nor anybody else can take any action in the nature of administrative discipline against the trustees except in pursuance of S. 62. The latter section provides for the framing of a separate scheme of administration for a math or excepted temple in cases where inquiry establishes mismanagement on the part of the trustee or proves that in the interest of the endowment such a scheme is necessary. The Board will make the inquiry and frame the scheme in consultation with the disciples of a math and the persons interested in the case of a temple. If a controlling or advising authority

is considered necessary in the case of a math, sub-clause (2) of section 63 restricts its personnel to the disciples. Before a scheme framed by the Board can take effect, it has to be decreed by a court and before the decree is granted an opportunity has to be given to persons interested to submit objections and suggestions. While we have been unanimous in the view that no scheme should be framed for maths except after detailed enquiry and in the circumstances detailed in Ss. 62 and 63 some of the members of the committee have strongly urged that the Saiva Sidhanta maths should be brought under strict control immediately and that a scheme for the better administration of such maths should be elaborated and embodied in a schedule to the Bill. It was decided, however, by a majority that such scheduling of a few maths would be invidious, that we had not sufficient materials before us to justify what would amount to a violation of the principles contained in the Bill and that the proper course for the disciples of these maths, who want control over their administration, would be to apply for a scheme immediately the Bill was passed into law. The proposal to schedule a scheme for the Saiva Sidhanta maths was accordingly negatived "1

(1) See Report of the Select Committee.

The provisions of this section were the subject of strong criticism not only by more than one member of the Select Committee, but also by several

members during the passing of the Bill in the Council:-

"As recognized in the majority report, the power of the heads of maths over the income of the institutions over which they preside are larger than those of dharmakarthas or managers of temples. Except on the question of succession there is no difference of rights and obligations between hereditary and non-hereditary trustees. It is essentially a wrong principle to adopt to club excepted temples and maths together and make the same provisions applicable to both. I should have preferred provisions relating to the non-hereditary trustees, hereditary trustees and maths to be separately given making the provisions applicable to one class applicable wherever suitable to another class or the other classes as well. The fact that the head of a math has very large powers of disposition over the income of the math, such disposition not being inconsistent with the purposes of the math, even though it may not be necessitated by the exigencies of the math, has not been given due recognition in the Bill. And this is largely due to the fact that maths and temples have been clubbed together. It is no doubt true that there are certain maths in the Presidency whose history reveals considerable mismanagement in the past, but that fact does not justify the same treatment being accorded to all the maths. It is, I think, necessary that power should be taken to except particular institutions or classes of insitutions from the scope of the Bill. The Select Committee have not been put in possession of sufficient materials to justify the same provisions being applicable to all the maths in the Presidency. In fact such materials as have been placed before the committee justify an opposite conclusion. In my opinion, when any relief is found necessary to be given in the case of a math, the initiative should be exclusively taken by the disciples of the math concerned, without the intervention of the Board, and the Courts whose functions are entirely judicial are much better situated and able to deterPosition of shebait and mahant—Summary of cases.—A shebait is, by virtue of his office, the administrator of the property attached to the temple, of which he is shebait. As regards the property of the temple, he is in the position of a trustee. But as regards the service of the temple and the duties that appertain to it, he is rather in the position of the holder of an office or dignity.

It has been laid down by the Judicial Committee, that a shebait has not the legal property, but only the title of manager of a religious endowment.² It follows from this that the rents of property dedi-

mine what schemes may be necessary for the administration of the maths than the Board, and the Board need not have any function assigned to it in the matter of a settlement of schemes for maths. All that is necessary is to give power to Courts to frame schemes in appropriate cases in regard to maths. It has to be remembered that maths are brought under the purview of special legislation for the first time now, and prudence suggests the observance of considerable caution in deciding how far their present management should be interfered with and what machinery should be created for such interference. "—Minute of Dissent by Mr. Govinda Raghava Iyer.

Mr. Ramachandra Rao, in his Minute of Dissent, said:-

"I have a good deal of hesitation and doubt about the inclusion of maths in the Bill. I do not minimise the serious allegations of mismanagement that have been made from time to time against some of the matadhipatis in Southern India and I sympathize with those of my colleagues who are anxious for a reform in their administration. I feel, however, that it would have been more satisfactory if legislation were undertaken separately for them after a thorough inquiry into the origin of these maths and the directions in which control is desired by all those concerned in their administration."

As regards the work done by the Board under this section, the members of the Board state in their first report as follows:--

"Under section 61, every math and excepted temple has to submit to the Board in each year not only a budget showing the probable receipts and disbursements of the following year but also a statement of the artual receipts and disbursements of the previous year. Forms therefore were prepared by the Board and copies of the same forwarded to as many of the trustees of maths and excepted temples as possible. The work of service of the forms on, and the obtaining of them properly filled up by, the trustees was mostly entrusted to the inspecting officers, and it is still unfinished owing to several reasons, the main reasons being the inadequacy of the staff and the obstructive and evasive tactics and the ignorance and unbusinesslike methods of many trustees. Non-excepted temples not under the control of committees are for the present being treated as on a par with maths and excepted temples for this purpose. The arrangement will have to be revised when these temples are actually brought under the control of committees. The budgets and statements of accounts due to the Board for each fashi year should be respectively submitted by the trustees before the 31st March preceding and October following."-First Report of the Rel. Endowments Board, p. 12.

(1) Ramanathan v. Murugappa, 29 M. 283=33 I.A. 139 (P.C.). See also Rangacharya v. Raman Acharya, 27 A.L.J. 229=114 I.C. 734.

(2) Shibessouree v. Mothooranath, 13 M.I.A. 270 (273).

cated to the services of an idol as well as offerings made to the

idol belong to the idol, and not to the shebait or mahant.

As to the property of a math, the title to it in an ordinary case is in the mahant as the spiritual head of the institution, but the property may, by the usage and custom of the institution, vest in trustees other than the spiritual head. In any case, the property is held solely in trust for the purposes of the institution, and the surplus income must be added to the endowment and not applied for the personal enjoyment of the head of the math.1

(1) Arunachalam v. Venkatachalapathi Guruswamigal, 46 I.A. 204 =43 M. 253=37 M.L.J. 460.

The following cases relating to maths and the position of the mahant

in relation thereto may be noted with advantage:-

Generally in the case of maths the rule is that the mahant or spiritual head is the owner. But this is not an invariale rule and by the usage and custom of the institution, the properties might vest in trustees other than its spiritual head. In any case the property is held solely in trust for the purposes of the institution and it is the duty of the manager of such a math to refrain from the personal enjoyment of surplus income and to add it to capital. Arunachallam Chetty v. Venkatachalapathi Guruswamigal, 43 M. 253=(1919) M.W.N. 850=24 C.W.N. 249=46 I.A. 204=22 Bom.L.R. 457-37 M.L.J. 460-17 A.L.J. 1097-10 L.W. 642-53 I.C. 288-26 M.

I.T. 479 (P.C.); (43 C. 707; 41 M. 296; 2 M. 175, Ref.).

A Mahant is not the owner of the property of the mutt. Musammat Parsania v. Hari Charan Das, 16 I.C. 588=17 C.L.J. 65. Also Mahant Jib Lal v. Mahant Jaga Mohun, 16 I.C. 453 (1)=16 C.W.N. 798. He is only a manager of the math properties. Rangacharya v. Raman Acharya, A.I.R. 1928 All. 689 (48 I.A. 302; 13 M.I.A. 270; 27

C.L.J. 605, Rel. on.)

The Mahant of a Math is a trustee in law of the Math properties. Devasikamani Nataraja Desikar v. Valliammi Achi, 37 M.L.J. 231; 52 I. C. 914.

There is no presumption with regard to the properties in the possession of a head of the Math that they are not Math properties. Paramahamsa Parasamaya v. Yavadrakshaki Ammal, 28 I.C. 829.

The head of an asthan has no property other than asthan property and his income consists of the profits of the property and offerings made to him in the character of trustee of the institution. It follows that his subsequent acquisitions must be presumed to have been made with the aid of such income and consequently will follow the same character as the nucleus. But the law does not disable him from owning property of his own and those who allege the separate and personal character of property found in his possession must discharge the onus that lies on them to prove their case. Rampat v. Durga Dharathi Mahant, 60 I.C. 440=23 O.C. 303.

A mahant though required to observe celibacy can acquire property for his personal benefit if he has funds of his own. Rajman v. Brahm Surat,

26 I.C. 621=17 O.C. 336.

The pronami offered by the faithful to the mahant is his private property. Such property does not become a part of the endowment property. There is no rule to determine whether on a particular occasion the offering was made to a deity or to the mahant. Kumud Bam v. Tripura Charan, 60 I.C. 464.

The dwelling house of a mahant is a part of the religious endowment and

must be maintained out of the income of the endowment. (Ibid.)

Dharmakarta.—A dharmakarta is no more than a manager, and his rights, apart perhaps from the question of personal support, are never higher than those of a mere trustee; in this respect he differs from a shebait or the head of math. Those functionaries have a much higher right with larger powers of disposal and administration.¹

Benami purchase by shebait of debutter property.—As a shebait occupies a fiduciary relationship in respect of the debutter property, a purchase of such property by him benami and without disclosing that he is the real purchaser is invalid even when the sale is in execution proceedings and the shebait has paid the full market value.²

Where the head of a math borrows money for necessary purposes binding on the trust, the creditor is entitled to a decree against the properties of the math even though the debt was not charged on the properties of the math. The case of a head of math who is a sanyasi stands in this respect on a different footing from that of a trustee or executor where in the absence of a charge created on the trust the creditor has to look to the personal liability of the trustee or executor. Rajagopalachary v. Ragavendra Rao, 43 M. 795=(1920) M.W.N. 568=28 M.L.T. 269=59 I.C. 287=12 L.W. 139=39 M.L.J. 174, (32 M.L.J. 259; 6 L.W. 640, Rel.).

(1) Srinivasa Chariar v. Evalappa Mudaliar, 49 I.A. 237=45 M. 565

(P.C.).

(2) Peary Mohan v. Manohar, 48 I.A. 258=48 C. 1019 (P.C.).

[See notes under S. 61 supra.].

Regarding the work of the Board under this section the following extracts from the First Report of the Religious Endowments Board may be noted:—

THE WORK OF THE BOARD .- "To the extent that has been possible under the limitations subject to which it has been working, the Board has attempted to overhaul matters by investigations and by the adoption of remedial measures. Though the work done so far is by itself very considerable, it must be admitted that what has been achieved is but little compared with what remains to be done. It may be added here that the principle so far followed by the Board is to take effective proceedings in all cases of proved mismanagement and to agree to make the supervision of the Board as light as it could be made, in the cases of institutions shown to be specially well managed. Cases of the latter description are necessarily few, but in such of these cases as have been actually brought to the notice of the Board, due consideration has been shown as is indicated by the fact that the application of the provisions of the Act has been very much restricted in respect of Vanamamalai and Ahobilam maths, the Sabhanayagar temple at Chidambaram and the temples in estates under the Court of Wards. But just one important feature of the Board's work may be instanced here to show the immense possibilities for good that are potential in the new machinery for supervising religious endowments. The Board has been able to bring about a marked increase in the income of a number of institutions by its interference. In the case of 10 temples the annual incomes were very substantially increased (in one case more than 500 per cent. and in six cases about 50 per cent. or more) during the period under report."—[First Report of the Commissioners.]

[See also notes under S. 61 supra.]

62. When the Board has reason to believe that the

Inquiry by Board into mismanagement by trustees.

trustee of a math or ¹[a specific endowment attached to a math] has been mismanaging the endowments ¹[of such math or specific endowment] or has been spend-

ANALOGOUS PROVISIONS OF THE ENGLISH CHARITABLE TRUSTS ACT.—Reference may be made to the more elaborate provisions of sections 10 11 and 12 of the English Charitable Trusts Act, 1853, which run as follows:—

- S. 10: Power to require accounts and statements.—The said Board may require all trustees or persons acting or having any concern in the management or administration of any charity, or the estate, funds, or property thereof, to render to the said Board, or to their inspectors or either of them, accounts and statements, in writing in relation to such charity, or the funds, estates, property, income, or monies thereof, or the administration, management, and application thereof, and may also require such trustees and persons to return answers in writing to any questions or inquiries addressed to them by the direction of the said Board relating to the matters aforesaid. (English Charitable Trusts Act).
- S. 11: OFFICERS HAVING CUSTODY OF RECORDS TO FURNISH COPIES AND EXTRACTS, IF REQUIRED BY BOARD.—All officers having the custody of enrolments, decrees, reports, records and other documents relating to or concerning any charity shall furnish such copies or extracts as shall be required by the said Board; and every Inspector, Secretary and other officer of the said Board for the time being employed for the purposes of this Act shall be at liberty by the authority and under the directions of the Board, and subject to such regulations as the Board may make in that behalf, to examine and search the registers and records of every court of law and equity, and every ecclesiastical court, and every public registery and office of records, and to take copies of an extract from any decree or document recorded or registered or deposited therein respectively, for any purpose contemplated by this Act, without fee or other payment in respect thereof. (Ibid.).
- S. 12: INSPECTOR MAY EXAMINE WITNESSES ON OATH.—Any Inspector acting under the authority of the said Board may, by precept under his hand, subject to such regulations as the said Board may make in that behalf, require any person, being a trustee of any charity, or otherwise acting or having any concern in the management or administration of any charity, or of the estates, funds, or property thereof, or in the receipt or payment of the income or monies thereof, or deriving any income or stipend therefrom, to attend before such Inspector for the purpose of being examined by him touching or relating to such charity, or the estates, funds, property, or income thereof at any time and place mentioned or appointed by such precept, and to bring and produce any deed, paper, writing instrument, or other document, being in the custody, possession or power of such person, and relating to such charity or the estates, funds, property, or income thereof, and may examine upon oath all persons attending in pursuance of such precept, and all persons voluntarily attending before him, and may administer Provided always, that no person shall be obliged to travel in obedience to any such precept more than ten miles from his place of abode. (Ibid.).

(1) Substituted by Madras Act X of 1946.

The Commissioners of the Endowments Board proceeded under Ss. 18 and 57 of the Hindu Religious Endowments Act on the assumption that 4

ing or alienating them for improper purposes, or when not less than twenty persons having interest make an application to the Board stating that in the interests of the proper administration of such endowments a scheme of administration should be settled the Board may hold an inquiry which shall be conducted in such manner as may be prescribed.

Schemes for maths. Schemes for maths. Section 62, the Board is satisfied that the trustee concerned has mismanaged the endowments of such math or has spent or alienated them for improper purposes, or that in the interests of the proper administration of such endowments, a scheme of administration should be settled, the Board may, after consulting in the prescribed manner the trustee and the persons having interest, by order settle a scheme of administration for the endowments connected with such math.

Explanation.—The power to settle a scheme under this sub-section shall be deemed to include a power to settle a scheme for any specific endowment or endowments attached to a math.

(2) A scheme settled by the Board under sub-section (1) may contain provision for—

was not the hereditary trustee of the temple, examined a few witnesses and then framed a scheme without making clear the case against him. There was no place for him in the Board of management. A filed a suit as contemplated by S. 57 for setting aside the scheme and also a petition under S. 84 (2) of the Act. In the petition the Court granted a declaration in his favour that he was the hereditary trustee and the suit temple was an excepted one. In the suit the Court decided that the scheme framed by the Court was not ultra vires and no case was made out for disturbing it. The Board filed no revision petition to the High Court, against the order in the original petition. On the other to the High Court, against the order in the original petition. On the other hand A filed an appeal against the decision of the lower Court in the suit. Held, that the procedure adopted by the Commissioners was wrong and the trustee A was prejudiced by such procedure. What is contemplated in S. 62 of the Act is that opportunity should be given to the trustee to hear what the case against him is and then the Board may proceed to consider whether a case for the settlement of a scheme has been made out. The inquiry under S. 62 should be more detailed and thorough than what is required under S. 57. (54 Mad. 532 and 68 M.L.J. 722=58 Mad. 862, Ref. to.) 48 L.W. 793=(1938) M.W.N. 1211=(1938) 2 M.L.J. 987.

Once the Religious Endowments Board takes action suo motu under S. 62 even though it may ultimately find that there was no mismanagement, nevertheless it can frame a scheme under S. 63, if it is necessary for the proper administration of the temple. 1939 M.W.N. 643=50 L.W. 126=

A.I.R. 1939 Mad. 682=(1939) 2 M.L.J. 11.

- (a) associating one or more persons with the trustee or trustees or constituting a separate body for the purpose of participating or assisting in the whole or any part of the administration of the endowments connected with such math: provided that such person or persons or the members of such body shall be chosen from persons having interest in such math;
- (b) appointing or directing the appointment, of a paid executive officer, who shall be a person professing the Hindu religion, on such salary as may be fixed by the Board, to be paid out of the trust funds and defining the powers and duties of such officer;
 - (c) defining the powers and duties of the trustee;
- (d) directing the appropriation of any surplus funds in accordance with the provisions of section 67.
- (3) The Board may determine what the properties of the math are and append to the scheme a schedule containing a list of such properties:

Provided that such determination shall not affect persons who are in hostile possession of any of the said properties.

- (4) The Board may, for good and sufficient cause, suspend, remove or dismiss any executive officer appointed in pursuance of a scheme settled under sub-section (1) or direct the removal of such officer.
- (5) The Board may at any time by order and in the manner provided in sub-section (1) modify or cancel a scheme settled under that sub-section.
- (6) Every order of the Board settling, modifying or cancelling a scheme under this section shall be published in the prescribed manner.
- (7) The trustee or any person having interest may, within six months of the date of such publication, institute a suit in the court to modify or set aside such order.] (Substituted by Madras Act X of 1946).

Settling a scheme.—Settling a scheme under this section is largely a matter of discretion, and the scheme will not be interfered with in appeal unless the discretion had been improperly

exercised or the Board has failed to give due consideration to matters which it was bound to consider.1

Scope: Cases before the Amending Acts of 1944 and 1946:-The amendment of S. 63 by Act XII of 1935 is not retrospective in operation. Under the section as it stood before the amendment the Board had no power either to appoint additional or associate trustees, or to appoint a manager not responsible to nor removable by the trustee. A.I.R. 1939 Mad. 801=(1939) 2 M.L.J. 395. S. 63 undoubtedly gives the Board power to frame a scheme for the management of a Mutt, and this power carries with it the power to settle what the properties of the institution are, so that the authority framing the scheme may know what properties are to be governed by the scheme and what the resources are whose disposal is to be provided for by the scheme. But the Board has no power to appoint associate trustees and to give them overriding powers over the Mahant. The section neither contemplates nor warrants the substantial supersession of the Mahant. The latter can only have powers which co-trustees will have under the general law. I.L.R. (1937) Mad. 197-44 L.W. 843-A.I.R. 1937 Mad. 106=(1937) 1 M.L.J. 475. There is no provision in the Madras Hindu Religious Endowments Act with regard to hereditary trustees in excepted temples being suspended. The Madras Hindu Religious Endowments Board, holding that there was evidence of considerable mismanagement and chaos in certain

⁽¹⁾ Kirpa Shankan v. Manohar Tambekar, 24 M.L.J. 199. Under the English Charitable Trusts Act (1860), S. 11 in making schemes, the Commissioners, as standing in the place of Courts of Equity, can only act within the limits of the equitable doctrine of cypres;

Enquiries about management.-"Wherever cases of mismanagement were brought to the notice of the Board either by the public or the Revenue authorities or the Board's inspecting officers, the Boards took care to institute early inquiries so as to remedy the defects and to ensure the better administration of the institutions. During the period under report over 590 applications relating to the management of religious institutions were received and dealt with by the Board. The enquiries thereof were either of an administrative character or in regular judicial form according to the requirements of each case, and the orders which were issued fall under the following classes:-

⁽i) Appointment of interim trustees under section 42.

⁽ii) Settlement of schemes for the proper administration of endowments under sections 57 and 63.

 ⁽iii) Grant of sanctions under section 73.
 (iv) Issue of other administrative orders such as appointing trustees where none had been working, giving instructions to committees to fill up vacancies in the office of trustee, or directions to trustees for the maintenance of proper accounts, for looking to the sanitary arrangements during festival occasions. First Report of the Religious Endowments Board, pp. 14-15.

excepted temples, settled a scheme under S. 63 and the effect of the scheme was that the four hereditary trustees should in turn function once in four years in conjunction with two non-hereditary trustees appointed by the Board who were to be in that position permanently. Held, that the provision in question in the scheme excluded three of the hereditary trustees in each year from taking an active part in the management of the temples and was beyond the powers of the Board, as it in effect suspended the trustees for a period. 57 L.W. 53=(1944) M.L.J. 82. (See now the provisions.)

Powers of Board to appoint Managing Trustec.—Under S. 63 (as amended in 1935) the Board has power to appoint any trustee, whether hereditary or non-hereditary, to be the managing trustee for a period. If the Board, however, purport to confer on one of the trustees all the powers of the general body of trustees, that would no doubt be exceeding their powers. 55 L.W. 802 (1)=A.I.R. 1943 Mad. 136=(1942) 2 M.L.J. 687=I.L.R. (1943) Mad. 409.

Construction and Scope.—An order of the Board rejecting a petition under S. 62 for settlement of a scheme for a certain temple is not an order within the meaning of S. 63, which can be interfered with or set aside by a Civil Court. I.L.R. (1937) Mad. 1023—45 L.W. 475—A.I.R. 1937 Mad. 481—(1937) 1 M.L.J. 559.

The policy of the Act (before the amendments of 1944 and 1946) was to place mutts and excepted temples in normal conditions under much less direct and detailed interference from the Board in matters of internal management than ordinary temples. This did not mean that in cases of proved mismanagement or incapacity, or in the imperative interests of future good government, such interference may not have to be provided for in a scheme. But in the absence of such special grounds the proper aim in a scheme of administration for an excepted temple was to leave the internal management as much as possible to the trustees providing only such safeguards as are sufficient to prevent grave misgovernment and to make the power of superintendence of the Board effective. 131 I.C. 19=A.I.R. 1931 M. 328=54 M. 532. See also 1935 M.W.N. 382=68 M.L.J. 722.

Estoppel.—Where in proceedings for framing a scheme in respect of an excepted temple, one of trustees of the temple makes a statement in the course of an inquiry by the Inspector to the effect that he has no objection to a dittam being settled by the Board for the management of the temple, and the Board settles a scheme, in a suit by the trustees under S. 63 of the Act to set

aside the scheme, it is not open to the Board to raise the plea of estoppel on the basis of the statement made by the trustee as a defence to the suit. The Board which has settled a scheme in a judicial capacity after hearing the parties and taking evidence cannot be said to have been prejudiced so as to attract the doctrine of estoppel. In any case the statement of the trustee cannot be regarded as being a consent given to the framing of a regular scheme for administration, as the word dittam could only mean scale of expenditure and not a scheme of management. Any consent, assuming it to be a consent, would not cover or validate a scheme which the Board has no jurisdiction to frame, the temple being an excepted temple. The consent given must be deemed to be given by the trustee in his personal capacity and cannot operate as an estoppel against the temple of which he is a trustee or even as against the trustee himself when suing or being sued in his capacity as trustee. 1940 M.W.N. 1016-(1940) 2 M.L.J. 615=1941 Mad. 79.

Limitation. - The Hindu Religious Endowments Board framed a scheme for a math on 31-8-1929. A clause in the scheme provided that the said scheme was to be in force for a period of two years. Later, orders were passed by the Board on 8-1-1930 and 16-3-1932, purporting to be orders modifying the scheme of 1929, by which fresh periods of duration of the scheme were substituted for the original period of two years. The order of 16-3-1932 amounted in substance to framing a new scheme. The trustee instituted a suit on 4-7-1932 to set aside the scheme, which was dismissed on the ground that it was barred by limitation having been brought more than 6 months after the publication of the scheme framed on 31-8-1929. Held, that the suit should not be treated as one to set aside the scheme of 1929, but was in form and in substance a suit to set aside the scheme of March, 1932, and was therefore in time. 1938 M.W.N. 449= 1938 Mad. 614=(1938) 1 M.L.J. 561.

Board refusing to frame scheme—Power of Court to frame scheme.—S. 63 gives no power at all to the Court to frame a scheme when the Board has refused to do so. S. 65 does not give the Court power to settle a scheme under any circumstances. S. 65 is merely intended to give the Court power, after a scheme has been framed to modify or cancel it at any time. There is no residuary power in the Court to frame a scheme. I.L.R. (1940) Mad. 901—51 L.W. 727—A.I.R. 1940 Mad. 756—(1940) 1 M.L.I. 882.

Application to Commissioners to establish a scheme—English law.—The Charity Commissioners may, in certain cases, on the written application of the Attorney-General, or all or any of the

trustees or persons administering, or claiming to administer, or interested in a charity, or any two or more inhabitants of any place where the charity is administered,1 establish a scheme for the administration of the charity.2

If application is once made for a scheme, it cannot be withdrawn by the applicant before completion.3

The powers of the Charity Commissioners are similar in extent to those possessed by the Court, and subject to similar limitations.4

The Commissioners decline to make schemes in contentious cases where it appears to them that a Court of justice is better qualified to deal with the matter.5

In what cases the Board will settle a scheme-English law .-Whether a scheme for the regulation of a charity should be settled by the Court or by the Charity Commissioners depends on the circumstances in each case, though in many instances each authority may have equal jurisdiction.6

Board or Court does not directly administer charitable trusts .-Where the Board or Court undertakes the execution of a charitable trust, it does not as a rule retain control of the funds and give the necessary directions for its administration from time to time, but it directs the settlement of a scheme leaving the trustees to administer the charity in accordance therewith.

The Court may in its discretion direct a scheme and at the same time order that it could not come into operation for a period, or until further application to the court is made.8

(1) Charitable Trusts Act, 1853 (16 & 17 Vict., c. 137), S. 43.

(2) Charitable Trusts Act, 1860 (23 & 24 Vict., c. 136), S. 2.
(3) Re Poor's Lands Charity, Bethnal Green, (1891) 3 Ch. 400.
(4) Charitable Trusts Act, 1880 (23 & 24 Vict., c. 130), S. 2.
(5) Charitable Trusts Act, 1860 (23 & 24 Vict., c. 136), S. 5. See Re

Burnham National Schools, (1873) L.R. 17 Eq. 241.

Even if a person as one of the heirs of the founder of the trust is entitled to complain of waste or mismanagement of the trust fund, yet, in order that he may bring a case for account, still more a case for the framing of a scheme of the removal of a shebait it is necessary that he should show that there has been some default on the part of the shebait, either mismanagement or failure in some important duty. It is not a sound proposition that he is a person who has any right to see the account and mere refusal by shebait to allow him to see the account will not amount to misconduct. Fulmani Dasi v. Priya Nath Sen, A.I.R. 1930 Cal. 583.

(6) See Charitable Trusts Act, 1860, S. 2; See Halsbury, Vol. IV,

рр. 185, 187.

(7) A. G. v. Solly, (1835) 5 L.J.Ch. 7.
(8) A. G. v. Price, (1908) 24 T.L.R. 761, a case where it seemed possible that, if time were given, the original trusts might be carried out without modification.

Schemes requiring sanction of Parliament.—The Charity Commissioners may provisionally approve and certify even schemes which cannot be carried into effect except by means of an Act of Parliament.1

Prison charities.—The Commissioners have power, upon the application of a Secretary of State, to establish schemes for prison charities 2

Places of religious worship. - The Charity Commissioners have power to establish schemes relating to places of religious worship which would otherwise be exempt from their jurisdiction3 upon the application of the trustees or persons acting in the administration of the charity.4

Directions to trustees to assist in preparing schemes. - The Commissioners may also at their discretion upon the application of the trustees or persons entitled to make such application, employ or authorise the trustees or administrators of a charity to employ competent persons to prepare schemes, orders, statements or other proceedings for the purposes of the Charitable Trusts Acts, with respect to the charity or to make or assist in any survey or local inquiry for that purpose and to defend such schemes and orders.5

Purchase of land by charities.—There are no provisions in the Charitable Trusts Act expressly enabling the Charity Commissioners to authorise the purchase of land by charities but the Commissioners in practice do so under their jurisdiction to establish schemes6 and also under their general power to authorise the application of moneys belonging to charities for any purpose which they may consider beneficial.7

Repairs, improvements, etc .- The Charity Commissioners, in cases where they think such expenditure beneficial to the charity, may authorise expenditure out of capital for the purpose of making new roads, streets, drains, sewers, erecting buildings. repairing, altering, re-building, or removing existing buildings, or of making any other improvements or alterations in the state or condition of

⁽¹⁾ Charitable Trusts Act, 1853 (16 & 17 Vict., c. 137), Ss. 54-60. Such schemes are in practice seldom necessary, owing to the wide application of cypres doctrine; see A. G. v. Mansfield (Earl), 2 Russ. 501, 519, A. G. v. Norwich Corporation, (1848) 12 Jur. 424; Re Shrewsbury Grammar School, (1849) 1 Mac. & G. 324; Re Bedford Charity, (1857) 26 L.J.(Ch.) 613.

⁽²⁾ Prison Charities Act, 1882 (45 & 46 Vict., c.65), S. 26.

⁽³⁾ Charitable Trusts Act, 1853 (16 & 17 Vict., c. 137), S. 20.

(4) Charitable Trusts Act, 1869 (32 & 33 Vict., c. 110), S. 15.

(5) Charitable Trusts Act, 1869 ((32 & 33 Vict., c. 110), S. 9.

(6) Charitable Trusts Act, 1860 (23 & 24 Vict., c. 136), S. 2. however S. 76, infra.

⁽⁷⁾ Charitable Trusts Act, 1853 (16 & 17 Vict., c. 137), S. 23.

the charity lands,1 or for any other purposes beneficial to the charity, and not inconsistent with the trusts or the intentions of the foundation.2

The Court³ and the Charity Commissioners when they sanction capital expenditure, require the amount expended to be recouped out of income, the payments to be extended over a number of years so as not to cripple the charity and thereby defeat its objects.

Right of suit-Powers of interference by Court .- Under this section the Court can find that there is no mismanagement and declare that no scheme is necessary.

The words used in this clause relating to the right of suit in Original Bill were "to modify or correct" such order. The words "modify or set aside" were inserted by an amendment in the Council; in supporting the amendment, Mr. Narasimha Raju said:-

"According to the clause as it stands, power is given to the Court to confirm, modify or correct the scheme framed by the Board. If the Court is satisfied on the facts of the case that there is no necessity at all to frame a scheme, the Court is not empowered to cancel the scheme. If this amendment is accepted such power will be given to the Court. The whole thing rests on the question of the fact, namely, whether there is mismanagement or not in an institution. Even in cases where the management has been going on thoroughly well, the Board may commit an error and possibly frame a scheme, and when that question comes before the Court, why should the Court be debarred from entering into question whether the management is going on satisfactorily and whether any interference by means of a scheme ih necessary or not? It is only in cases where the Court finds gross mismanagement, it can order the framing of a scheme. In cases where the Court finds the work going on satisfactorily why should it not be competent to say that no interference is necessary? Therefore, I think to hold the scales even between the Board and the trustees who take opposite views, the Court should be empowered to cancel the scheme framed by the Board, in cases where it finds the management is conducted satisfactorily."4

Charitable Trusts Act, 1853 (16 & 17 Vict., c. 137), S. 21.
 Charitable Trusts Act, 1860 (23 & 24 Vict., c. 136), S. 15.

 ⁽³⁾ Andrews v. M'Guffog, (1886) 11 App. Cas. 329, 330.
 (4) See proceedings in Council. Where the plaintiff sued to recover property of the idols installed in a math of which he was in actual possession, held that he was competent to sue. Naurangi Lal v. Ram Charan Das, 11 Pat.L.T. 403=A.I.R. 1930 Pat. 455.
In a suit under S. 63 for the modification of a scheme, evidence to

show how the scheme worked is admissible. The need to amend a scheme may arise as much from the fact that it does not work or has not been worked properly as from previously existing facts such as mismanagement. 131 I.C: 19=A.I.R. 1931 M. 328=54 M. 532. See also 58 Mad. 862.

64. Every order of the Board, under section 63 shall, subject to the result of any suit which may Finality of Board's be instituted under 1[sub-section (7)] of that section, be final and binding on the trustee and all persons having interest.

When Court will interfere with settled scheme-English Practice. - When a scheme has been settled by the Charity Commissioners, the Court will not interfere with it, unless the Commissioners have acted ultra vires, or the scheme contains something wrong in principle or in law.

¹[In the case of maths and specific endowments connected therewith, the Board may so far Board to exercise as may be exercise the powers referred to powers under sections in sections 59 and 601. 59 and 60.

scheme of administration which has been 65. Any settled by a Court under section 63 or which under section 75 is deemed to be a scheme Modification or cancellation of schemes. settled under this Act may, at any time, for sufficient cause be modified or cancelled by the Court 1[on an application made] by the Board or the trustee or any person having interest but not otherwise.

[See also notes under Ss. 61 and 67.]

Alteration of Schemes and Trusts-(1) Schemes established by statutes .- Schemes established by statute cannot be altered by the Court or Charity Commissioners, but matters not provided for by the statute may be regulated by the Court.2

Recourse must therefore be had to the proper Legislative authority where even slight alterations are necessary in the provisions of schemes possessing statutory sanction.3

(2) Schemes of charities established by Royal Charter .- So also schemes of charities established by royal charter cannot be altered by the Court or the Commissioners.4

⁽¹⁾ Substituted by Madras Act X of 1946.

⁽¹⁾ Substituted by Madras Act A of 1990.

(2) Re Shrewsbury Grammar School, (1849) 1 Mac. & G. 324, 331, 332; see also Re Bedford Charity, (1833) 5 Sim. 578.

(3) See Charitable Trusts Act, 1853 (16 & 17 Vict., c. 137, S. 54; A. G. v. Christ's Hospital (Governors), (1896) 1 Ch. 879, 889.

(4) A. G. v. Smart, (1748) 1 Ves. Sen. 72; A. G. v. Christ's Hospital (Governors), (1896) 1 Ch. 888.

But the Court has jurisdiction to interfere and alter a-scheme where the charter of incorporation gives the corporators power to make rules for carrying out the intentions of the founder, and it appears that the rules and regulations so made do not carry out such intentions.1

(3) Schemes settled by Court .- A scheme settled by the Court for the administration of a charity can be altered by the Court, if the lapse of time and change of circumstances render it necessary that for the interest of the charity, the alteration should be made.2

Practice as to alteration of schemes.—Schemes settled by courts or commissioners are not altered except upon substantial grounds, and upon clear evidence not only that the existing scheme does not operate beneficially, but that it can be made to do so consistently with the object of the foundation.3 A scheme for applying the income of a charity remains in force only until further order or the establishment of a new scheme 4 A scheme making an unfair division among the objects of a charity may be altered.5

Alterations allowed .- Provisions in schemes as to religious instruction,6 the number of governors,7 or the granting of building leases,8 may be varied.

Consent of Attorney-General-English Law .- The application or consent of the Attorney-General is probably necessary to an alteration of a scheme by the Court ⁹ In a proper case it is his duty to make the necessary application. ¹⁰ The Court will not, upon the motion of one of the interested parties,11 alter a scheme which it has settled with the approval of the Attorney-General.

No alteration by founder or trustees allowed. - After a charity has once been established, and trusts declared, the trusts cannot be

⁽¹⁾ A. G. v. Dedham School, (1857) 23 Beav. 350, 356; A. G. v. Wygeston Hospital, (1849) 12 Beav. 113.
(2) A. G. v. St. John's Hospital, Bath, (1865) 1 Ch. App. 92, 106; Glasgow College v. A. G., (1848) 1 H.L. Cases 800; and see A. G. v. London Corporation, (1790) 3 Bro.C.C. 171.

⁽³⁾ A. G. v. Worcester (Bishop), (1851) 9 Hare. 328 and see Re Sekeford's Charity, (1861) 5 L.T. 884; A. G. v. Stewart, (1872) L.R. 14 Eq. 17.

⁽⁴⁾ Re Betton's Charity, (1907) 77 L.J.Ch. 193. (5) A. G. v. Buller, (1822) Jac. 407. (6) A. G. v. St. Johm's Hospital, Bath, (1876) 2 Ch.D. 554. (7) Re Browne's Hospital, (1889) 60 L.T. 288. (8) Re Smith's (Henry) Charity, Hartlepool, (1882) 20 Ch.D. 516 (C.A.).

⁽⁹⁾ A. G. v. Stewart, (1872) L.R. 14 Eq. 17. (10) A. G. v. Worcester (Bishop), (1851) 9 Hare 328, 360.

Re Sekeford's Charity, (1861) 5 L.T. 488.

varied or added to by the founder, whether an individual or a body of subscribers or by the trustees.3

No forfeiture on alteration by schemes.—A condition of forfeiture upon alteration of a trust is not allowed to take effect if the trusts are altered by a scheme established by a competent authority.

Application of cypres doctrine.—Where a clear charitable intention is expressed, it will not be permitted to fail because the mode, if specified, cannot be executed, but the law will substitute another mode cypres,⁵ that is, as near as possible to the mode specified by the donor.⁶

Application cypres by trustees not allowed.—The court or the Charity Commissioners, but not the trustees may direct the cypres application of a charitable gift in any of the following cases in which the substance of the gift is charity, namely, where a particular purpose is named but fails either initially or subsequently, where the machinery for effectuating the charitable intention fails and where a surplus remains after satisfying the named objects.

°[CHAPTER VI-A.

NOTIFIED TEMPLES.]

65-A. (1) ¹⁰[(a) Notwithstanding that a temple or specific endowment attached to a temple is governed by a scheme pre-

(1) Re Hartshill Endowment, (1861) 30 Beav. 130.

(2) A. G. v. Kell, (1840) 2 Beav. 575; A. G. v. Bovill, cited 2 Beav. 578.

(3) See Halsbury's Laws of England, Vol. IV, p. 189.

(4) Re Bacon's Charity, per Jessel, M.R., December 7, 1878, a report of which case is on the files at the office of the Charity Commissioners, and a note of it is to be found in Tudor's Law of Charities and Mortmain, 4th ed., p. 187, note q.

(5) See Moggridge v. Thackwell, (1802) 7 Ves. 36, 69.

(6) See also A. G. v. Whitchurch, (1796) 3 Ves. 140, 144. Sec Notes under S. 67 infra.

(7) See Halsbury's Laws of England, Vol. IV, p. 191.

(8) Ibid., p. 194.
Schemes settled by Civil Courts—Application to Board for modification.—Where applications were severally made to the Religious Endowments Board for modification of schemes which had been settled in respect of certain temples by the Civil Courts and were made on 3rd January, 1927, when Act I of 1925 was still in force and the question was whether the applications under S. 53 (4) of Act I of 1925 did not lie in respect of schemes settled by Courts before the Act and lay only in respect of schemes settled subsequently. Held, that the schemes settled by the Courts under S. 92, C.P. Code, referred to in S. 71 of Act I of 1925 must be only those which had been already settled. 1932 M.W.N. 1120=36 L.W. 883=63 M.L.J. 780.

(9) Chapter VI-A was inserted by S. 7 of Madras Act XII of 1935.

(10) Substituted by Madras Act X of 1946.

viously framed by the Board or settled by a court, where the Board has reason to believe that the temple or endowment is being mismanaged and is satisfied that in the interests of the administration of the temple or endowment, it is necessary to take proceedings under this Chapter, the Board may, by a notice published in the prescribed manner, call upon the trustee and all other persons having interest in the temple or endowment to show cause why the temple or endowment should not be notified, to be subject to the provisions of this Chapter.]

- (b) Such notice shall state the reasons for the action proposed, and specify a reasonable time, not being less than one month from the date of the issue thereof, for showing such cause.
- (2) (a) The trustee or any person having interest in the temple or endowment may thereupon prefer any objection he may wish to make to the issue of a notification as proposed.
- (b) Such objection shall be in writing and shall reach the Board before the expiry of the time specified in the notice aforesaid or within such further time as may be granted by the Board in that behalf.
- (3) Where no such objection has been received within the time specified in the notice issued under sub-section (1) or within such further time as may be granted by the Board, the [Provincial Government] ¹[on receipt of a report from the Board] may, by notification published in the [Official Gazette], declare the temple or endowment to be subject to the provisions of this Chapter.
- (4) Where any such objection or objections has or have been received within the time specified in the notice issued under sub-section (1) or within such further time as may be granted by the Board, the Board shall hold an enquiry into the objection or objections in the manner prescribed, and decide whether the temple or endowment concerned should be notified to be subject to the provisions of this Chapter or not.

⁽¹⁾ Inserted by Madras Act X of 1946.

Explanation.—The powers conferred on the Board by this sub-section shall be exercised by a Committee of the Board consisting of not less than three commissioners of whom the president shall be one.

- [(5) (a) If a Committee of the Board decides that the temple or endowment should be notified as aforesaid, the Board shall publish its decision in the Official Gazette.
- (b) The trustee or any person having interest may appeal against such decision to the Board within two months from such publication and such appeal shall be heard and decided by the President and all the other Commissioners of the Board sitting together. If no such appeal is preferred or if such an appeal is preferred and dismissed, then the Provincial Government may, on receipt of a report from the Board, by notification published in the Official Gazette, declare the temple or endowment to be subject to the provisions of this Chapter.
- (6) No suit or other legal proceeding shall lie to modify or set aside any notification issued or action taken under this section.
- (7) The Provincial Government may, at any time, on an application made to them, modify or cancel a notification issued under this section.] (Substituted by Madras Act X of 1946.)

Applicability.—There is nothing in S. 65-A or in any other section in Ch. VI-A which exempts a temple in respect of which a scheme has been settled by the Court under S. 92, C.P. Code, from the operation of Ch.! VI-A of the Act. Ch. VI-A must therefore be held to apply to a temple which is managed under such a scheme. But in exercising its powers under the Chapter, the Board must act judicially after a full and proper inquiry, and as the provisions of Ch. VI-A, with regard to appeal, are illusory, the need for care is all the greater. I.L.R. (1941) Mad. 807=4 F.L.J. (H.C.) 321=54 L.W. 147=1941 M.W.N. 720=A.I.R. 1941 Mad. 878=(1941) 2 M.L.J. 175 (Power of High Court to quash by writ of certiorari order of notification by Board, where it appears to be arbitrary and illegal). Where most of the grounds of complaint against the management of a temple are well-founded, the mere fact that the managing trustee is not responsible for some of the defects disclosed is no ground for the

Board not taking action under Ch. VI-A and the High Court will not interfere with the order of the Board removing the trustee and framing a scheme, unless it is shown to be perverse. Where, further, the managing trustee who is given an opportunity to file objections fails to do so, the Court may refuse to allow objections to be raised in the suit filed by him to get rid of the order. 55 L.W. 550=A.I.R. 1943 Mad. 104=(1942) 2 M.L.J. 403.

Notification of temple—When to be resorted to.—The procedure in regard to notification ought not to be lightly resorted to unless and until there is such serious mismanagement of a temple as would justify an ouster of the trustees in charge of a temple from their office. Notification is a drastic step. 50 L.W. 126—A. I.R. 1939 Mad. 682—(1939) 2 M.L.J. 11. The procedure under S. 65-A cannot be resorted to unless there is gross mismanagement justifying restriction of the power of the trustee. Nor can the Board give as reasons therefor the very reasons which have already been considered and adjudicated upon and found against by the Civil Court in a suit to which the Board was a party. There is nothing in the Act which exempts the Board from the fundamental rule of law that a party to a suit is bound by the decision in that suit unless it is set aside by an appeal, review or a fresh suit. 1939 M.W.N. 1098—A.I.R. 1940 Mad. 246.

When a decree has been passed by the Civil Court framing a particular scheme for the management of a temple in a suit to which the Hindu Religious Endowments Board was a party and put forward contentions and suggestions, which were all consisidered by the Court before giving its decision, it is not open to the Board to start proceeding under Chapter VI-A of the Hindu Religious Endowments Act as amended in 1935, at any rate without giving that scheme a fair trial. The Board has no right to proceed under the new Chapter VI-A, on the ground that, in its view, the scheme of management ordered by the Civil Court is not in the best interests of the institution or that it is convinced that the decision of the Civil Court is not conducive to the proper and efficient management of the institution. Nor has the Board any right to assume that the Civil Court would not render justice and then urge it as a ground for its not taking part in certain proceedings before the Civil Court, to ignore the decree of the Civil Court altogether and to issue notice under S. 65-A of the Act. No litigant and no statutory body can flout the decision of the Court in suits to which they were parties. 1939 M.W.N. 1098. Under S. 65-A (1) (a) of the Act, the Board has to give reasons and the trustee is entitled to meet those reasons. It is not enough for the Board to merely say that the scheme framed by a Civil Court-when the same has been framed in a suit to which the Board itself was a party-is found wanting. The reasons must be such as would be capable of being met. They must be sufficiently specific to give a reasonable opportunity to the other party to show cause against those reasons. 1939 M.W.N. 1098.

Where the notice under S. 65-A (1) of the Act is served on the managing trustee of a temple who has charge of all its endowments, and also, on the Commissioner who is an inspecting and supervising officer in relation to the temple, such service is sufficient and valid and is not defective on the ground that it is not served on the Athinadars who have appointed the managing trustee. 55 L.W. 550-1943 Mad. 104.

65-B. On the publication of a notification in respect of

Schemes to cease to apply to notified temple or endowment.

any temple or endowment under section 65-A, the scheme of administration, if any, settled for such temple or endowment by any Court [whether before or after the

commencement of this Act]1 or by the Board, as the case may be, and all rules, if any, framed under such a scheme shall cease to apply to such temple or endowment.

Appointment of executive officer for notified temple or endowment and his powers

and duties.

65-C. (1) For every notified temple or endowment, the Board shall appoint a salaried officer, who shall be a person professing the Hindu religion, as soon as may be after the publication of the notification under section 65-A in respect of such temple or endowment.

(2) The executive officer shall hold office for such period as may be fixed by the Board in that behalf and he shall exercise such powers and perform such duties as may be vested in or assigned to him by the Board.

Explanation.—The Board shall define the powers and duties which may be exercised and performed respectively by the executive officer and the trustee, if any, of the notified temple or endowment. The executive officer shall for purposes of section 78 be deemed to be a person appointed to discharge the functions of a trustee under the Act.

⁽¹⁾ Inserted by Madras Act X of 1946.

- (3) The executive officer shall be paid such salary and allowances as may be determined by the Board from the funds of the notified temple or endowment.
- (4) The Board may, for good and sufficient cause, suspend, remove or dismiss the executive officer.

Where a temple is notified by the Government under S. 65-A of the Act, the temple shall be administered thereafter by a paid officer of the Endowments Board which is given jurisdiction to delegate all powers to that officer or at its option to reserve some powers for the trustees as the exigencies of the case may demand. Chap. VI-A provides for complete supersession of the machinery of trustees and committees and the substitution therefor of a paid officer of the Board. S. 65-C (2), Explanation by implication, also provides for the gradual restoration of some powers to trustees and suggests as a possibility that the Board may not fill future vacancies of trustees as they arise. An order by the Board defining the powers and duties of the executive officer and of the trustees, which places all real power in the hands of the former, is not ultra vires. 1937 M.W.N. 1342.

Jurisdiction over notified temple or endowment. [65-10. (1) Notwithstanding anything contained in this Act—

- (i) no temple committee shall be entitled to exercise any jurisdiction over a notified temple or endowment; and
- (ii) the Board and its President may, in respect of any notified temple other than an excepted temple and in respect of any notified endowment other than an endowment attached to an excepted temple, exercise all or any of the powers and perform all or any of the duties of the committee and its President, respectively.
- (2) The provisions of this Act relating to appeals from the orders of the committee to the Board or the approval of the actions of a committee by the Board shall not apply to the orders or actions of the Board acting under clause (ii) of subsection (1)]. (Omitted by Madras Act V of 1944).

Section 57 not to apply to notified temple or endowment.

65-E. [Section 57]¹ shall cease to apply to such temples and endowments as are notified under section 65-A.

⁽¹⁾ Substituted by Madras Act X of 1946.

CHAPTER VII.

APPLICATION OF ENDOWMENT FUNDS.

66. The trustee of a math or temple may, out of the funds of the endowments in his charge, Authority of trustee after satisfying adequately the purposes of the endowments, incur expenditure arrangements for securing the health, safety,

to incur expenditure on health, etc., of pilgrims and worshippers.

or convenience of disciples, pilgrims or worshippers resorting to such math or temple:

Provided that [the Board] may, for reasons to be set forth in writing, restrict and place, under such control as [it may think fit]1 the exercise by the trustee of his discretion under this section.

Scope of section. -S. 66 gives power to the trustees of religious endowments connected with maths, temples, etc., attracting a large number of pilgrims or worshippers from outside to pay for making the necessary sanitary and other arrangements in the localities concerned on the occasions of any fairs or festivals.2

The Select Committee said:- "Clause 32 of the original Bill was mainly a repetition in substance of the corresponding provisions of the District Municipalities Act and Local Boards Act. We consider that this repetition is unnecessary and that it is enough to authorize expenditure on arrangements made for the comfort of pilgrims and worshippers if in his discretion the trustee incurs such expenditure. The proviso is intended as a safeguard against an undue or extravagant diversion of trust funds for such purposes by a trustee."

67 (1) The Board may, after holding an enquiry in such manner as may be prescribed, by order, Cypres application declare that the purpose of a religious endowment has from the beginning been or has subsequently become, impossible of realization or that the machinery for effectuating the original purposes of the endowment has failed or no longer exists, or that after satisfying

⁽¹⁾ Substituted by Madras Act V of 1944. See also Madras Act X of 1946.

⁽²⁾ See also the corresponding provisions of section 156 of the Madras District Municipalities Act, 1920, and S. 128 of the Madras Local Boards Act, 1920, and Statement of Objects and Reasons.

adequately the purposes of the endowment and after setting apart a sufficient sum for the repair and renovation of the buildings connected with the math or temple or the endowments attached thereto there is a surplus which is not required for such purposes; and may, by such order, direct that the amount of the endowment or such surplus as is declared to be available, as the case may be, be appropriated to religious, educational or charitable purposes not inconsistent with the objects of such math or temple:

Provided that in the case of a temple founded and maintained by a community the amount of the endowment or the surplus shall, as far as possible, be utilized for the benefit of the community for the purposes mentioned above.

(2) It shall be competent to the Board when giving a direction under sub-section (1) to determine what portion of such amount or surplus shall be retained as a reserve fund for the math or temple and to direct the remainder to be appropriated to the purposes specified in that sub-section.

(3) The Board may at any time by order and in the manner provided in sub-section (1) modify or cancel an order

passed under that sub-section.

(4) The order of the Board under this section shall be published in the prescribed manner. The trustee or any other person having interest may within six months of the date of such publication institute a suit in the court to modify or set aside such order.

Subject to the result of such suit the order of the Board shall be final and binding on [* * *]¹ the trustee and all persons having interest.

(5) Any decision of the court under this section may, at any time, for sufficient cause be modified or cancelled by the court [on an application made]² by the Board or the trustee or any person having interest but not otherwise.

Scope of Section.—"S. 67 provides for the diversion of the surplus funds, if any, of religious endowments for other purposes such as education, medical relief, etc. The power to order such

⁽¹⁾ The words "the committee, if any" omitted by Madras Act V of 1944.

⁽²⁾ Substituted by Madras Act X of 1946.

diversion is vested in the courts and the principles to be observed in ordering such diversions are those which courts ordinarily follow in applying the *cypres* doctrine."

The Select Committee said:—"The corresponding clause in the original Bill (clause 33) has elicited the largest volume of criticism. We recognize that public opinion has expressed itself

unmistakably in this connection.

"We have considerably narrowed the application of the doctrine of cypres, as embodied in the original Bill. The Board to which an application is made has first to determine, whether there is a surplus; it has then to determine whether any portion of the surplus should be retained as a reserve fund for the religious institution. If it finally finds that after providing adequately for the original objects and a reserve fund for the institution, funds are available for application elsewhere, it may sanction such application but only to purposes within the meaning of the expression "religious, educational or other charitable purposes not inconsistent with the objects of the math or temple."

Jurisdiction of Board—Need for existence of Temple.—The Board has no jurisdiction to decide the way in which the income from properties attached to a temple should be applied when the temple has, before the Act came into force, permanently ceased to exist as a place of public worship. The Act is applicable only if there is in existence a temple as defined by S. 9 (12). It may be that a temple which at the time when the Act came into force, had been temporarily abandoned as a place of worship for reasons, such as destruction by fire or flood, would still be a temple to which the Act applied. 55 M. 636—35 L.W. 588—1932 M. 470

=62 M.L.J. 594.

'Income'—Yeomiah allowance—Levy of contribution.—Yeomiah allowance granted by the Government to a temple does not come under 'income' and cannot be the basis for levy of contribution under S. 69. 137 I.C. 510—1932 M.W.N. 1062—35 L.W. 348—A.I.R. 1932 M. 310.

Ecclesiastical charities—Application of cypres doctrine.—In dealing with the question as regards ecclesiastical charities Lord

Romilly says:-

"The first principle which is applicable to all these charities, without exception, is that the intentions of the founder are to be carried into effect, as far as they are capable of being so, and so far as they are not contrary to law, using the word 'law' in its proper and widest signification as including the precepts of religion

(1) See Statement of Objects and Reasons.

⁽²⁾ Report of the Select Committee. See also article by the Advocate-General in 51 M.L.J. (Journal portion), pp. 40-41.

and morality. If, therefore the founder had directed that only persons conforming to the Church of England shall be recipients of his bounty, his will must be followed."1

Statutory cypres application.—This section is an instance of a statutory cypres application of trust funds. In England also there are several instances of cypres application being authorised by

statute.2

Cypres doctrine and its application—(i) General—The doctrine explained .-- The cypres doctrine is founded on the principle that "Where a clear charitable intention is expressed, it will not be permitted to fail because the mode, if specified, cannot be executed but the law will substitute another mode cypres, that is, as near as possible to the mode specified by the donor.3

Donors' wishes to be respected .- The primary rule to be observed in the application of the cypres doctrine is that the inten-

tion of the donor must be observed as far as possible.

The Court has no power to substitute a charity in place of one directed by the testator, merely on the ground that the latter is more useful.4

If the donor names a particular object which is capable of taking effect, any cypres application that becomes necessary must be restricted within the limits of that object.5

So, too, the mode of application must as far as possible coin-

cide with the donor's wishes.6

(1) Attorney-General v. Calvert, 23 Beav. 248 (254).

The English Allotments Extension Act, 1882; the Charitable Trustees Incorporation Act, 1872; the Prison Charities Act, 1882; the Municipal Corporation Act, 1883; and the City of London Parochial Charities Act, 1883 conferred with respect to these charities, special powers of scheme-making in excess of the limits of the doctrine of cypres.

For some purposes, ecclesiastical charities are treated as being on a different footing from general charities (In re Ross's Charity; and In re

Perry Almshouses Charity, (1899) 1 Ch. 21).
(2) See Roman Catholic Charities Act, (1860) 23 & 24 Vict., c. 134, S. 1; see also Re Charitable Gifts for Prisoners, (1872) 8 Ch. App. 199; Commons Act, 1876 (39 & 40 Vict., c. 56), S. 19; Commons Act, 1899 (62 & 63 Vict. c. 30), S. 18; Allotments Extension Act, 1882 (45 & 46 Vict.,

c. 80), S. 14.
(3) See Moggridge v. Thackwell, (1802) 7 Ves. 36, 69; Mills v. Farmer, (1815) 1 Mer. 55; See Ganapathi Lyer's Rel. End. 2nd Ed., pp. 159, 171-172, and 303; A. G. v. Whitchurch, (1796) 3 Ves. 140, 144; Carry v. Abbot, (1802) 7 Ves. 490. Where there is vagueness and uncertainty, the doctrine of cypres should be extended as much as possible. Sundar Lal v. Kullu Ram, 65 I.C. 820.

. (4) Advocate-General of Bombay v. Fardoorji, 11 I.C. 356=13 Bom.

L.R. 332. (5) Clephane v. Edinburgh Corporation, (1869) L.R. 1 Sc. & Div. at p. 421; Re Prison Charities, (1873) L.R. 16 Eq. 129, 146. (6)-See Re Lamberth Charities, (1853) 22 L.J. (Ch.) 959; A. G. v. Price, (1908) 24 T.L.R. 763.

A charity may be cypres to the original object although it seems to have no trace of resemblance to it,1 if no other can be found having a nearer connection,2 but objects nearer the donor's intention will always be selected in preference to those more remote.3

Where a testator intends to benefit several charitable objects one of which fails, the fund must not be distributed among the other objects, if the one that fails bears no resemblance to the others.4

Objects to be chosen.—Objects already adequately provided for should not be chosen for the purpose of a. cypres application.5

Trustees to act on permission.—However desirable it may be in no circumstances can trustees of a charity apply the trust funds cypres on their own authority, without the direction of the Court or the Charity Commissioners.6

Application for cypres by trustees not allowed.—The Court or the Charity Commissioners, and not the trustees, may direct the cypres application of charitable gift in cases in which the substance of the gift is charity.7

(ii) On failure of particular purpose named.—If a general charitable intention is indicated, but the particular object named is illegal,8 or an accumulation is directed to extend beyond the legal limit the gift may be applied cypres.

The principle is also applicable where the particular purpose is for any other reason impracticable but is coupled with a charitable intention. 10

(1) A. G. v. Boultbee, (1794) 2 Ves. 388.

(2) Ironmongers' Co. v. A. G., (1840) Cr. & Ph. 208, 227.
(3) Re Bridewell Hospital, (1860) 8 W.R. 718.
(4) Ironmongers' Co. v. A. G., (1840) Cr. & Ph. 227; see also 11 I. C. 356=13 Bom.L.R. 332.

(5) Re Prison Charities, (1873) L.R. 16 Eq. 129, 146.

(6) A. G. v. Coopers' Co., (1812) 19 Ves. 187; A. G. v. Vivian, (1826) 1 Russ. 226.

(7) Sec Halsbury's Laws of England, Vol. IV, p. 191.
(8) A. G. v. Vint, (1850) 3 De G. & Sm. 704 (Gift to provide the inmates of a workshop with alcoholic drink). See also A. G. v. Combe, (1679) 2 Cas. in Ch. 18; Moggridge v. Thackwell, (1802) 7 Ves. 36, 75. Distinguish the cases where not only the particular mode of application, but the dedication to charity, is illegal; in such cases the gift fails entirely. A. G. v. Baxter, (1684) 1 Vern. 248; Da Casta v. De Pas, (1754) Amb.

 (9) Martin v. Margham, (1844) 14 Sim. 230.
 (10) A. G. v. Bower, (1798) 3 Ves. 714; Biscoe v. Jackson, (1887) 35 Ch.D. 460, C. A. Instances of such purposes are a gift for redeeming a mortgage on a particular chapel which had been already paid off [Bunting v. Marriott, (1854) 19 Beav. 163; Re Unite, (1905) 75 L.J. (Ch.) 163; see also Corbyn v. French, (1799) 4 Ves. 418, 431, 432]; or for erecting Institutions which cannot be identified.—Under the above head must also be included gifts to non-existent or unidentifiable institutions

Thus, where there is a gift to a charity which has never existed or cannot be identified, the court leans in favour of a general charitable purpose, and accepts even a small indication of the testator's intention as sufficient to show that a purpose, and not a particular charity, is intended.

Charity terminating before testator's death.—If the institution named as legatee has ceased to exist before the death of the testator, but it is clear that the testator mean to benefit an object rather than an individual society, the fund will be applied cypres.²

Where subsidiary purpose alone fails.—If the main purpose or object of a charitable gift is practicable, but the subsidiary purpose or object fails, the latter may be varied or dispensed with.³

Similarly, where the substance of the gift is charity, impracticable conditions may be modified or removed.

Cypres doctrine has also been applied to the following cases, if there is an overriding charitable intention:—

- (i) where the charitable purpose prescribed by the donor takes effect in the first instance but subsequently fails, as by the abolition of a particular form of punishment,⁵
- (ii) where the failure is due to the abolition by the State of slavery in the colonies,6
- (iii) where the direction is for the relief of particular diseases and the object fails owing to the dying out of such diseases,⁷

a church in a particular place where a new church had already been built (Corbyn v. French, supra) or a gift void as being contrary to statute (Sims v. Quinlan, (1864) 16 1 Ch.R. 1918).

(1) Re Davis: Hannen v. Hillyer, (1902) 1 Ch. 876, 884=71 L.J. (Ch.) 594.

(2) Re Kilvert's Trusts, (1871) L.R. 12 Eq. 183; 7 Ch. App. 173, and see Marsh v. A. G., (1860) 2 John & H. 61; 3 O.L.J. (Ch.) 233 (gift to a school which closed before the testator's death); Coldwell v. Holme, (1854) 2 Sm. & G. 31=23 L.J. (Ch.) 594 (gift to an institution which changed its name before the testator's death).

(3) Brantham v. East Burgold, cited 2 Ves. 388.

(4) Glasgow College v. A. G., (1848) 1 H.L. Cas. 800; Re Richard-

son's Will, (1887) 58 L.T. 45.

(5) A. G. v. Hanky, (1867) L.R. 16 Eq. 140 (n) (Abolition of imprisonment for debt; funds applied for assisting discharged prisoners). See also Re Prison Charities, (1873) L.R. 16 Eq. 129.

(6) A. G. v. Gibson, (1835) 2 Beav. 317 (n).

(7) A. G. v. Hicks, (1805) Highmore, Mortmain, 336 (leprosy).

- (iv) where the failure of the charity is caused by the extinction of a particular class of foreign refugees,1
- (v) where the failure of the charity is caused by reason of a particular form of religious service ceasing to be required,2
- (vi) where the funds could not be expended for the purpose specified on account of a particular congregation changing its renets.3
- (vii) The property of a charitable institution which becomes extinct will be applied cypres for the purposes of another institution with similar objects.4

If there is no overriding charitable intention, and the particular charitable purpose fails, the gift fails entirely.5

III FAILURE OF MACHINERY FOR EFFECTUATING CHARITABLE INTENTION.

Instances of failure of machinery.

Charitable gifts are also applied cypres where the machinery for ascertaining the intended objects breaks down.

Such cases occur

- (i) where the bequest is for charitable and non-charitable purposes in shares to be determined by persons who fail to make the necessary apportionment,6 or
- (ii) where objects are intended to be, but are not, named by the lonor,7 or
- (iii) where a fund is to be divided among a particular class at the discretion of persons who fail to make the division,8 or
 - (iv) where the trustees decline to act,9 or

⁽¹⁾ A. G. v. Daugars, (1864) 12 W.R. 363 (French Protestants, funds applied for French Protestants in London).

⁽²⁾ A. G. v. Stewart, (1872) L.R. 14 Eq. 17.
(3) A. G. v. Bunce, (1807) L.R. 6 Eq. 563=37 L.J. (Ch.) 697.
(4) Spiller v. Maude, (1881) 32 Ch.D. 158 (n) (theatrical charity);
Incorporated Society v. Price, (1884) 1 Jo. & Lat. 498 (School which was closed); Clephane v. Edinburgh Corporation, (1869) L.R. 1 Sc. & Div. 417 (421) (Hospital taken by Railway Company and proceeds applied to out-door relief).

⁽⁵⁾ Biscoe v. Jackson, (1887) 35 Ch.D. 460 (465).
(6) Doyley v. A. G., (1735) 4 Vin. Abr. 485, epl. 16.

⁽⁷⁾ A. G. v. Syderfen, (1683) 1 Vern. 226. (8) A. G. v. Gladstone, (1842) 13 Sim. 7: 11 L.J. (Ch.) 361. (9) A. G. v. Amdrew, (1798) 3 Ves. 633.

- (v) where the trustee appointed was appointed in the capacity of holder of an office which ceased to exist before the testator's death,1 and
- (vi) where an institution charged with the administration of a charity becomes subject to a foreign State, the Court may refuse to allow the funds to be administered by that institution, and direct a new scheme.2

IV WHERE SURPLUS REMAINS AFTER SATISFYING THE PRESCRIBED OBJECTS.

If the income of the fund should either originally or in process of time become greater than is necessary for the purpose named, the Court has power to apply the surplus to such other purpose as it may deem proper upon the cypres principle.3

The principle applies equally where the surplus is occasioned by the decay of the particular charity named.4

Where the number of persons intended to be benefited by the charity was originally limited, surplus revenue may be disposed of by increasing the number of participants.5

So also the amounts payable to the beneficiaries,6 or the area from which the beneficiaries are to be taken may be enlarged, or a charity originally intended for males only may also be extended to females.8

But though prima facie increased revenue is divisible among the original objects of the charity, there is no absolute rule to that effect."

CASES WHERE NO PARTICULAR PURPOSE IS NAMED.

Donor's intention followed if possible.-Where the mode of executing a charitable gift is originally undefined, it is impossible of course to select an object cypres to that which has failed. 10

(1) A. G. v. Stephens, (1834) 3 My. & K. 347.

(2) A. G. v. London Corporation, (1790) 3 Bro.C.C. 171.
(3) Chamberlayne v. Brockett, (1872) 8 Ch. App. 206 (211).

Slevin v. Hepburn, (1891) 2 Ch. 236 (240) C.A.
(4) A. G. v. Ironmongers' Co., (1834) 2 My. & K. 576; Re Slevin:

Slevin v. Hepburn, (1891) 2 Ch. 236 (240) C.A.

(5) Thetford School cases, (1610) 8 Co. Rep. 130-b; A. G. v. Bovill, (1840) 1 Ph. 762.

(6) A. G. v. Mercers' Co., (1833) 2 My. & K. 654.

(7) A. G. v. Wansey, (1808) 15 Ves. 221, 234; Re Sekeforde's Charity, (1861) 4 L.T. 321.

(8) Anon. cited 2 Jac. and W. 320; A. G. v. Wansay, (1808) 15 Ves. 231 at p. 235.

(9) Re Ashton's Charity, (1859) 27 Beav. 119.

(10) Barclay v. Maskelyne, (1858) 4 Jur. (N.S.) 1294, 1297.

The intention of the donor will, however, be carried out as far as possible by the gift being applied to charitable objects to be nominated by the Court, Crown1 or Charity Commissioners,2 as the case may be.

Ascertainment of intention. - In such cases any indications throwing light on the donor's intentions will be regarded,3 as, for example:

(i) his religious opinions,4

(ii) his interests in a particular locality,5

- (iii) the nature of other charitable bequests in the same will.6
 - (iv) prefatory directions in favour of a certain class.7
 - (v) or even wishes expressed in unattested codicil.8

A gift for the poor generally could not property be applied for a purpose unconnected with the relief of poverty, such as the rebuilding of a church.9

Discretion of Court .- If however no particular charitable purpose is indicated, and if the general charitable intention is subject to no restrictions express or implied, the discretion of the Court in the application of the fund in what seems the most expedient manner is unlimited. 10

Illustrations.—Thus, gifts for charity generally may be applied for the benefit of hospitals, 11 schools 22 or other charitable institutions 13

Bequests for the poor may be used for educational purposes,14 for the benefit of the scholars at a particular school.15 for poor relations of the testator,¹⁶ and for poor foreign refugees of whom the testator himself was one.¹⁷

(1) White v. White, (1778) 1 Bro.C.C. 12; Mills v. Farmer, (1815) 1 Mer. 55, 96, 102=19 Ves. 486.

- 1 Mer. 55, 96, 102=19 Ves. 486.
 (2) Charitable Trusts Act, 1860 (23 & 24 Vict., c. 136), S. 2.
 (3) Cook v. Duckenfeld, (1743) 2 Atk. 568: A. G. v. Ironmongers'
 Co., (1844) 10 Cl. & Fin. 908, 922, 924—929, H.L.
 (4) Re Ashton's Charity, (1859) 27 Beav. 115, 120.
 (5) Re Mann: Hardy v. A. G., (1903) 1 Ch. 232.
 (6) Mills v. Farmer, (1815) 19 Ves. 483; 1 Mer. 55.
 (7) Moggridge v. Thackwell, (1802) 7 Ves. 36, 87.
 (8) A. G. v. Madden, (1843) 2 Con. & Law. 519.
 (9) A. G. v. Mathews, (1677) 2 Lev. 167.
 (10) Philpott v. St. George's Hospital, (1859) 27 Beav. 107.
 (11) Legge v. Asgill, (1818) 3 Hare, 194, n.
 (12) A. G. v. Syderfen, (1683) 1 Vern. 224.
 (13) Re Dickason, (1837) 3 Hare. 195, n.
 (14) Hereford (Bishop) v. Adams, (1802) 7 Ves. 324.
 (15) A. G. v. Mathews, (1677) 2 Lev. 167.
 (16) Ware v. A. G., (1824) 3 Hare. 194, n.
 (17) A. G. v. Rance, (1728) cited Amb. 422.

- (17) A. G. v. Rance, (1728) cited Amb. 422.

Where the name of the charity legatee is left blank, the gift may be applied under a scheme.1

CASES WHERE THE DOCTRINE IS NOT APPLICABLE.

(a) Where gift not legally charitable .- On the failure of a gift which is not charitable in the legal sense the cypres doctrine is not applicable. 2

On the same principle the unexpended funds of a noncharitable society which is dissolved pass to the Crown as bona

vacantia.3

Where contrary intention expressed.—No cypres application is possible in cases where a contrary intention is expressed or is to be implied from the language used by a testator; as for example, where there is a direction that on failure of a bequest the property shall fall into residue,4 or where the charitable gift is to promote

some specific and well-defined purpose.5

(b) Where no failure.—Where the original foundation is capable of taking effect, the Court has no authority to vary it and to apply the charity estate in a manner which it conceives to be more beneficial to the public, or even in a manner which the Court may surmise that the founder would himself have contemplated could he have foreseen the changes which have taken place by lapse of time. 6

(6) Halsbury, Vol. IV, p. 197.

⁽¹⁾ Pieschel v. Parts, (1825) 2 Sim. & St. 484. (2) A. G. v. Haberdashers' Co., (1834) 1 My. & K. 420.* (3) Cunnack v. Edwards, (1896) 2 Ch., 679, C.A. (4) Corbyn v. French, (1799) 4 Ves. 418, 431. (5) Doraisami Pillai v. Sandanathammal, 2 L.W. 577=30 1.C. 225= (1915) M.W.N. 478.

A. G. v. Sherborne School Governors, (1854) 18 Beav. 256, 280; and see A. G. v. Boultbee, (1794) 2 Ves. 380, 388; A. G. v. Whiteley, (1805) 11 Ves. 241; A. G. v. Boucherett, (1855) 25 Beav. 116, A18, 119. a gift to erect and endow alms-houses cannot be applied in building an hospital (Philpott v. St. George's Hospital, (1859) 27 Beav. 107; see also Anderson v. Glasgow (Wrights), (1865) 12 L.T. 805; H. L. Clephone v. Edinburgh Corporation, (1869) L.R. 1 Sc. & Div. 417 (421), nor can a fund intended for the relief of physical destitution be applied for educational purposes (Re Lambeth Charities, (1853) 22 L.J.(Ch.) 959; Re Stane, (1853) 21 L.T. (O.S.) 261; A. G. v. Northumberland (Duke), (1889) 6 T.L.R. 237). Distinguish cases of gifts for the benefit of the poor, which as a rule may be applied for education (Re Campden Charities. (1881) 18 Ch.D. 310, C.A.) but not for rebuilding a cathedral (A. G. v. Mathews, (1677) 2 Lev. 167). A gift for the reformation of vagrants could not be employed in the relief of destitute persons (Re Bridewell Hospital (1860) 8 W.R. 718: see also Re Prism Charities (1873) L.R. 16 pital, (1860) 8 W.R. 718; see also Re Prison Charities, (1873) L.R. 16 Eq. 129); or a fund for the redemption of British slaves for purposes connected with negro slaves (A. G. v. Ironmongers' Co., (1840) 2 Beav. 313, 325).

In like manner gifts for the poor of a particular locality1 or for a particular church2 or school3 or for the benefit of a particular class of persons4 or a particular congregation5 or to endow a particular lectureship6 must be confined within the limits named. unless it can be said on failure of such purposes that they were merely modes of effectuating a wider charitable intention.7

A bequest to a particular charitable institution which has

ceased to exist prior to the testator's death fails entirely.8

- (c) Gifts for masses or superstitious uses in English law .-Bequest for the purpose of having masses said for the repose of the souls of particular persons, which are void for superstition, besides, not being charitable, are not applicable cypres.9
 - (d) Void gifts.-Void gifts are not applied cypres. 10
- (e) Application Extra Territorium. A court has no jurisdiction to apply the cypres doctrine extra territorium. 11

CHAPTER VIII.

FINANCE.

68. All costs and expenses incurred in connexion with legal proceedings in Recovery from respect of any religious endowment to which endowment of expenses incurred by the Board a Board or 12 [an Assistant Commissioner] or committee on legal is a party shall, notwithstanding anything proceedings. contained in section 74, be payable out of

the funds of such endowment. (1) Re Campden Charities, (1881) 18 Ch.D. 310, C.A. But a gift for the benefit of a town need not be confined to freemen (A. G. v. Bushby, (1857) 24 Beav. 299).

(2) Anon. (1702), 8 Freemen (Ch.) 330; A. G. v. Oxford (Bishop).

(1786) 1 Bro. C.C. 444 n.

(3) A. G. v. Andrew, (1798) 3 Ves. 633, 649. (4) A. G. v. Baxter, (1684) 1 Vern. 248 (ejected ministers), reversed on other grounds sub-non; A. G. v. Hughes, (1689) 2 Vern. 105. (5) A. G. v. Wansay, (1808) 15 Ves. 231.

(6) A. G. v. Cambridge (Margaret and Rigins Professors), (1682) 1

Vern. 55.

(7) See Bunting v. Marriott, (1854) 19 Beav. 163; Re Unite, (1906)

75 L.J. (Ch.) 163.
(8) Re Ovey, (1885) 29 Ch.D. 560; Re Rymer: Rymer v. Stanfield,

(1895) 1 Ch. 19.

(9) West v. Shuttleworth, (1835) 2 My. & K. 684; Heath v. Chapman, (1854) 2 Drew 425. The rule against gift to superstitious uses does not apply in India.

(10) Sims v. Quinlan, (1864) 16 I. Ch. R. 191; and see A. G. v. Whitchurch, (1796) 3 Ves. 141.

(11) 36 B. H11=12 I.C. 702=13 Bom.L.R. 1025. (12) Substituted by Madras Act V of 1944.

Annual contribution from endowments to the Board and committee.

69. [(1) Every math or temple and every specific endowment attached to a math or temple shall pay annually for meeting the expenses of the Board such contribution not exceeding '[three per centum] of its income as the Board may determine:

Provided that every notified temple other than an excepted temple, and every notified endowment other than an endowment attached to an excepted temple shall pay annually to the Board such contribution not exceeding three per centum of its income as the Board may determine.]

- ²[(2) Every math, temple or specific endowment attached to a math or temple the annual income of which for the fasli year immediately preceding, as determined under sub-section (1), is not less than one thousand rupees shall pay annually, for meeting the cost of auditing its accounts, such further sum not exceeding one and a half per centum of its income as the Board may determine.
- (3) All sums paid in pursuance of sub-section (2) shall be credited to a fund called "The Audit Fund" and shall be utilized only for the purpose of meeting the cost of auditing the accounts of the maths, temples and endowments referred to in sub-section (2), including the cost of any staff maintained for auditing such accounts.]
- ²[(4) The annual ³[payments referred to in sub-sections (1) and (2)] shall be made notwithstanding anything to the contrary contained in any scheme settled or deemed to be settled under this Act for the math, temple or specific endowment concerned. 7 [Sub-section (3) substituted by Madras Act V of 1944. See also Madras Act X of 1946. 7

An endowment for nitya nivedya and deeparadhana in a temple is a general endowment to the temple and is not a special endowment. It is temple property and can, as such, be proceeded against for the contribution payable by the temple under S 68. 55 L.W. 631=A.I.R. 1942 Mad. 722=(1942) 2 M.L.J. 493.

⁽¹⁾ Substituted by Madras Act V of 1944.
(2) In section 69, sub-section (3) re-numbered as sub-section (4) and before the sub-section as so re-numbered, the sub-sections (2) and (3) inserted by Madras Act X of 1946.

⁽³⁾ Substituted by Madras Act X of 1946.

Where a temple committee ceases to function, and the Endowments Board which has general superintendence of all religious endowments in the province performs all the duties of the committee under S. 60-A in addition to its own duties the Board is entitled to the contribution contemplated by S. 69 (2) in addition to the contribution under S. 69 (1) 55 L.W. 782=A.I.R. 1943 Mad. 131=(1942) 2 M.L.J. 705=I.L.R. (1943) Mad. 342.

The Hindu Religious Endowments Board is entitled to levy the 1 1/2 per cent, contribution provided under S. 69 (2) even when there is no temple committee functioning at the time. 57 L.W. 537=1944 M.W.N. 670=(1944) 2 M.L.J. 260.

Limitation.—There was no time limit for the levy of contribution under S. 69 of the Act. There was nothing in the Act to suggest that the levy under the section should be in the year for which it is levied or in the next year. The Board therefore could claim and collect contribution not only for the current year but arrears for several faslis prior to the year in which it was claimed. 55 L.W. 849—(1942) 2 M.L.J. 732—1943 Mad. 193—I.L.R. (1943) Mad. 503. (See now S. 70-A which provides for a three years time limit). 57 L.W. 537—1944 M.W.N. 670—(1944) 2 M.L.J. 260 is not now good law.

Kattalaidar—Assessment of—Powers of Board.—Since a Kattalai is a religious endowment, S. 70 (1) of the Act authorises the Board to assess the kattalaidar or the trustee of a specific endowment with contribution under S. 69 of the Act. S. 70 (2) of the Act further enables the Board to recover the amount so assessed by execution proceedings against such trustee. The executing Court must execute it as a decree and cannot go behind it. 41 L.W. 454—1935 M.W.N. 302—68 M.L.J. 549.

Contributions—Recovery of—Application to Court by Board—Validity of demand—If can be gone into.—A Court to which an application is made under S. 70 (2) of the Act has the same powers, and is subject to the same limitations, as would be a Court executing an ordinary civil decree. It must execute the demand made by the Board as it stands and cannot enter into questions of its validity or propriety. In particular, no inquiry can be made into the merits of the decision upon which the demand is based. It is, however, open to the Court to decide in any disputed case whether the property out of which it is proposed to realise the amount is a religious endowment within the meaning of the Act. When notice is served on the archakas, they have no right to dispute the validity of the notice served by the Board on the ground that it was not served on the trustee. If, in fact,

there is some other trustee, it is for him to object on that score, if he elects to intervene, and not for the archakas. 41 L.W 411 = 1935 M.W.N. 317=68 M.L.J. 494. See also 68 M.L.J. 200.

Income.—The income contemplated by this section seems to mean the gross income including the income received through special endowments or kattalais, of which they are the trustees and also income of lands held by hereditary office-holders or of temple servants as remuneration for their services.

- Assessment and recovery of costs, expenses and contributions payable under sections 68 and 69 shall be assessed on and notified to the trustee of the math, temple or specific endowment concerned in the prescribed manner.
- (2) (a) Such trustee may, within fifteen days from the date of the receipt of such notice or within such further time as may be granted by the Board, prefer in writing his objection thereto, if any, to the President of the Board. Such objection may relate either to his liability to pay or to the amount specified in the notice. The President shall consider such objection and give his decision confirming, withdrawing or modifying his original notice. The amount of assessment as stated in the original notice or as fixed by the President on objection, as the case may be, shall be final, and shall not be liable to be modified or cancelled in a Court of Law.
- (b) Within one month of the date of receipt of the notice of assessment or when objection has been preferred, within one month from the date of the decision of the President, or within such further time as may be granted by him, such trustee shall pay the amount specified in the original notice or the amount as fixed by the President on objection.
- (3) If the trustee fails to pay the amount aforesaid within the time allowed the Collector of the district in which any

⁽¹⁾ See S. 71, Cl. (1) which empowers the Local Government to make rules for calculating the income of religious endowments. Veomiah allowance granted by the Government to a temple does not come under 'income' and cannot be the basis for the levy of contribution under S. 69. 137 I. C. 510=1932 M.W.N. 1062=35 L.W. 348=1932 M. 310. As to liability of Mutts for contribution, see 1938 M.W.N. 744=48 L.W. 735=1938 Mad. 810=(1938) 2 M.L.J. 85 cited under S. 9 supra.

property of the math, temple or endowment is situated shall, on requisition made to him in the prescribed manner by the President and subject to the provisions of this section, recover such amount as if it were an arrear of land revenue and pay the same to the President.

- (4) (a) On receipt of a requisition under sub-section (3), the Collector shall issue a notice to the trustee concerned—
- (i) requiring him, within fifteen days from the service thereof, to pay the amount mentioned in the requisition and specified in the notice; and
- (ii) stating that on default, such amount will be recovered as if it were an arrear of land revenue.
- (b) If, within the period of fifteen days aforesaid the amount demanded is not paid, the Collector shall proceed to recover the amount specified in the notice, with the charges of collection, as if it were an arrear of land revenue.
- (5) The Collector shall, on receipt of a requisition under sub-section (3), withhold the amount mentioned therein out of the tasdik or any other allowance payable by the Provincial Government to the math or temple concerned and pay the said amount to the President of the Board, but where the tasdik or any other allowance is insufficient for the purpose, the Collector shall withhold and pay as aforesaid, the amount available, and recover the balance as if it were an arrear of land revenue.
- (6) Places of worship including temples and tanks and places where utsavams are performed, idols, vahanams, jewels and such vessels and other articles of the math or temple as, in accordance with the usage of the math or temple concerned, are necessary for purposes of worship or ceremonial processions shall not be liable to be proceeded against in pursuance of subsections (3), (4) and (5).
- (7) Instead of selling the property after attachment thereof under the provisions of the Madras Revenue Recovery Act, 1864, it shall be open to the Collector at the instance of the Board, to appoint a Receiver for the property or such portion thereof as may be necessary and collect the income thereof until the amount sought to be recovered is realized. The cost of

expenses incurred and the remuneration, if any, paid to the Receiver shall be paid out of the income of the math, temple or specific endowment concerned.

- (8) No suit, prosecution or other legal proceeding shall be entertained in any Court of Law against the Crown or any servant of the Crown for anything in good faith done or intended to be done in pursuance of this section.] (Substituted by Madras Act X of 1946).
- Sec. 70 (Cases before the amendment of 1946).—[See also Notes under S. 69, supra]: Jurisdiction of District Judge—Legality of Board's demand—If can be enquired into.—A District Judge who is moved under S. 70 (2) of the Madras Hindu Religious Endowments Act is in the same position as any other executing Court and is precluded from deciding whether the demand made by the Hindu Religious Endowments Board was right or wrong He has no jurisdiction to examine the demand on its merits. but is bound to enforce it. 41 L.W. 264—1935 M. 217—68 M.L.J. 200. See also 68 M.L.J. 494.

Recovery of amount—Application for—Appeal.—The words in S. 70 of the Endowments Act "as if a decree had been passed" attract to the order the whole procedure in execution and the right of appeal provided under S. 47 of the C.P. Code. 56 M. 712 = 37 L.W. 207=1933 M. 305=65 M.L.J. 364.

Service of notice—When by usage one of several trustees acts as the managing or executive trustee, the notice served on such trustee must be deemed to be a proper notice as against the institution. 56 M. 712=141 I.C. 799=1933 M. 305=65 M.L.J. 364. Where an archaka takes possession of temple property or a part of it and conducts himself for all practical purposes as if he were a trustee his position is that of a trustee de son tort or de facto trustee especially when there is no properly constituted or de jure trustee. In such a case the notice required by S. 70 may be served on the archaka. That is a proper and valid service. 46 L.W 587=1937 M.W.N. 1032=A.I.R. 1937 Mad. 852=(1937) 2 M.L.J. 413. (As to service of notice See also 1943 Mad. 104).

Duty of Court—Demand by Board—Power of Court to question validity.—A Court under S. 70 (2) of the Act must execute the demand made by the Board as if it were a decree and cannot enter into questions of its validity or property. 46 L.W. 587—1937 M.W.N. 1032—A.I.R. 1937 Mad. 852—(1937) 2 M.L.J. 413.

Limitation .- An application by the Board of Commissioners made to the District Judge for recovery of contributions under S. 70 (2) of the Act, after demand and refusal, is governed by Art, 182 of the Limitation Act. The right to apply accrues only after the expiry of three months from the date of the demand made by the Board and the amount becomes payable only then. 41 L.W. 264=1935 M.W.N. 142=1935 M. 217=68 M.L.J. 200. [See now S. 70-A inserted by Madras Act X of 1946.] Proceedings under S. 70, Hindu Religious Endowments Act, are proceedings in execution of a decree, and therefore it is not open to the persons against whom proceedings are instituted to object to the validity of the orders passed by the Hindu Religious Endowments Board and they are not entitled to have the ex parte decree set aside in review. 42 L.W. 497-1935 M.W.N. 384-1935 Mad. 585. Assessment by Board of Kattalaidar-Recovery of contribution assessed—Execution—Court bound to order execution. 41 L.W. 454-1935 M.W.N. 302-68 M.L.J. 549.

Writ of Certiorari. - A writ of certiorari does not lie to quash an order, merely ministerial; it is intended for the purpose of adjudication on the validity of acts judicial. The term "judicial" does not necessarily mean the act of a judge or legal tribunal sitting for the determination of matters of law. "Judicial act" means an act done by competent authority and imposing a liability or affecting the rights of others. An order passed by the Hindu Religious Endowments Board under S. 70 assessing and demanding the amount of costs and expenses incurred by the Board in connection with legal proceedings in respect of an endowment is only an administrative or ministerial order; not involving the determination of any question of the rights of subjects or any duty to act judicially, and consequently a writ of certiorari cannot be granted to quash such an order. Further the writ is not available because another remedy is provided for under S. 70 (2). The fact that the Board in assessing the costs and expenses demands not only the amount spent by the Board in defending legal proceedings and also amounts which they have had to pay to others by way of costs. 1937 Mad. 103=71 M.L.J. 594.

Board not to levy contribution for more than three faslis immediately preceding the fasli in which a notice of assessment is issued under section 70.

70-A. (1) After the commencement of the Madras Hindu Religious Endowments (Amendment) Act, 1946, it shall not be competent for the Board to levy any contribution for more than three faslis immediately preceding the fasli in which a notice of assessment is issued under section 70.

(2) Nothing in this section shall affect any levy of contribution already made or moneys already collected by the Board before the commencement of the Madras Hindu Religious Endoyments (Amendment) Act, 1946.] (Substituted by Madras Act X of 1946).

CHAPTER IX.

MISCELLANEOUS.

Power of Provincial Government to make rules.

71. (1) The [Provincial Government] may make rules to carry out all or any of the purposes of this Act not inconsistent therewith.

- (2) In particular, and without prejudice to the generality of the foregoing power, they shall have power to make rules with reference to the following matters:—
- (a) all matters expressly required or allowed by this Act to be prescribed;
- [(b) the registration of electors; (Omitted by Madras Act V of 1944;)]
- [(c) the nominations of candidates, the times of election, the mode of recording and counting votes and the declaration and publication of the results of elections; (Omitted by Madras Act V of 1944;)]
- [(d) the conduct of inquiries and the decision of disputes relating to elections; (Omitted by Madras Act V of 1944;)]
- (e) the powers of the President and commissioners of a Board [and of Assistant Commissioners] to hold inquiries, to summon and examine witnesses and to compel the production of documents:
- (f) the grant of leave, leave allowances and travelling allowances to the President and commissioners of a Board and generally the conditions of service of such President and commissioners;

⁽¹⁾ Inserted by Act V of 1944.

- [(ff) the method of recruitment and qualifications, salaries and allowances, discipline and conduct and generally the conditions of service of Assistant Commissioners: 11
- (g) the budgets, reports, accounts, returns or other information to be submitted by Boards;
- (h) the qualifications for officers and servants of a Board, the grant of leave, leave allowances and travelling allowances to them, the establishment of provident funds for them and generally the conditions of their service;
- (i) the organization of a staff of auditors, [the method of their recruitment, their qualifications]2 their salaries and allowances, the control of such staff, its relations with Boards. [Assistant Commissioners] and trustees and generally the conditions of service of auditors;
 - (i) the calculation of the cost of audit [* * * *]4
- (k) the manner in which the accounts of Boards. [maths, temples and specific endowments], shall be audited and published, the time and place of audit and the form and contents of the auditor's report; [* *]6
- (1) the method of calculating the income of a religious endowment:
- $\lceil (m) \rangle$ the preservation, maintenance, management, and improvement of the properties of the endowments and the temple buildings;
- (n) the inspection and supervision of the properties of the endowments and the temple buildings by such persons as the Provincial Government may direct, the reports to be submitted by such persons and the fees leviable for such inspection, supervision and report;
- (0) the preservation of the images in temples.] (Added . by Madras Act X of 1946.)
- (3) The power to make rules under this section shall be subject to the condition of previous publication.

Inserted by Madras Act V of 1944.
 Inserted by Madras Act X of 1946.

⁽³⁾ Substituted by Madras Act V of 1944.

⁽⁴⁾ Omitted by Madras Act V of 1944.
(5) Substituted by Madras Act X of 1946.
(6) The word "and" omitted by Madras Act X of 1946.

English Law.—It is provided by S. 45 of the English Charitable Trust Act, that the Lord Chancellor may make orders for regulating proceedings before the District and County Councils.¹

Rules, By-laws and Regulations.

Rules —The first set of rules relating to the conduct of enquiries, the appointment and punishment of the Board's officers, the grant of leave, leave allowances and travelling allowances to the Commissioners of the Board and its staff, and such other matters, came into force in July 1926 in virtue of the notification in G. O. No. 2934, L. & M., dated 10th July 1926. Subsequently, rules relating to elections of presidents and vice-presidents of temple committees, the preparation of electoral rolls and the conduct of election of members to temple committees and the method of calculation of income of religious institutions for the purposes of the Act, have been finally issued by the Government by their Orders No. 4151, L. & M., dated 25th September 1926, No. 4626, L. & M., dated 21st October 1926, and No. 23, L. & M., dated 4th January 1927, respectively.

By-laws.—Under section 19 of the Act, draft by-laws were framed by the Board dealing, among other things, with the division of duties among the President and other Commissioners of the Board, the manner, in which their decision shall be ascertained otherwise than at meetings, the procedure and conduct of business at the meetings of the Board, the custody and investment of funds of the Board, the committees and trustees, the form and manner of appli-

cations to the Board, etc.2

Power to alter ment] may make rules altering, adding to, or cancelling any of the schedules to this Act.

- (2) All references made in this Act to any of the aforesaid schedules shall be construed as referring to such schedules as amended in exercise of the powers conferred by sub-section (1).
- (3) A draft of the rules proposed to be made under this section shall be laid ³[before both the Chambers of the

(1) See also County Court Rules, 1899.

⁽²⁾ First Report of Hindu Religious Endowment Board, dated 18-1-1927,

pp. 1 and 2.

(3) Substituted for "on the table of the Legislative Council" by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order, 1937.

Provincial Legislature] and the rules shall not be made '[unless both Chambers] by resolution ²[approve] the draft either without modification or addition or with modifications or additions 3[to which both the Chambers agree]; but upon such approval being given, the rules may be made in the form in which they have been approved, and such rules on being so made shall be notified and shall thereafter be of full force and effect.

"There were three schedules to this Act one dealing with electoral qualifications, the second relating to court-fees, and the other making provision for the transition from the old committees to the new ones. These schedules were made alterable with the approval, by means of a resolution, of the Legislative Council -a procedure which follows the one prescribed in the Local Boards Act, section 201." (See Statement of Objects and Reasons).

[N.B.-Schedules I and III are now omitted by Madras Act X of 1946.1

The absence of the machinery provided by the Act does not suspend or postpone the operation of the provisions of S. 72 of that Act. If S. 72 was in force when the melcharths were granted and if there was no Board or Committee at the time, the trustees have only to wait till the Board or Committee was constituted. 161 I.C. 670=1936 M.W.N. 127=1936 Mad. 223.

- 73. [(1) The Board, or any person having interest and having obtained the consent of the Board, may institute a suit in the court to obtain a decree for any of the following reliefs:-
- (a) appointing or removing a trustee of a math, temple or specific endowment attached to a math or temple;
- (b) vesting any property in a trustee of a math, temple or specific endowment attached to a math or temple;
- (c) declaring what proportion of the endowed property of a math, temple or specific endowment attached to a math or temple or of the interest therein shall be allocated to any particular object of the endowment;

⁽¹⁾ Substituted for "unless the Legislative Council" by the Second Schedule to the Government of India (Adaptation of Indian Laws) Order,

⁽²⁾ Substituted for the word "approves" by paragraph 5 (2) of ibid.(3) Inserted by the Second Schedule to ibid.

- (d) directing accounts and inquiries in respect of the administration or management of a math, temple, or specific endowment attached to a math or temple;
- (e) granting such further or other reliefs as the nature of the case may require.] (Substituted by Madras Act X of 1946.)
- ¹[(2) The provisions of sub-section (1) shall apply as well to suits and appeals pending in civil courts on the date of the commencement of the Madras Hindu Religious Endowments (Amendment) Act, 1935, as to suits and appeals instituted after the commencement of that Act.]
- [(3) Sections 92 and 93 and rule 8 of Order 1 of the First Schedule of the Code of Civil Procedure, 1908, shall have no application to any suit claiming any of the reliefs provided in this Act in respect of the administration or management of a temple, math or specific endowment.
- (4) No suit or other legal proceeding claiming any relief provided in this Act in respect of such administration or management shall be instituted except under and in conformity with the provisions of this Act.
- (5) Nothing contained in this section shall affect the right of a trustee of a temple, math or specific endowment to institute a suit to enforce the pecuniary or proprietary right of the institution of which he is the trustee or the rights of such institution as a beneficiary.] (Substituted by Madras Act X of 1946.)

Scope and object of section .- The avoidance of unnecessary litigation has been kept in view in drafting this section.2

⁽¹⁾ Sub-section (2) was renumbered (3) and new sub-section (2) was inserted by Madras Act XII of 1935.

⁽²⁾ Statement of Objects and Reasons.

The following extracts from the minutes of dissent by certain members

of the Select Committee may also be noted:—
"I am not in favour of repealing S. 92, and R. 8 of O. 1 of the Code

of Civil Procedure relating to the powers of the Advocate-General regarding public charities".—Minute of Dissent by Mr. Ramachandra Rao.

"I do not also approve of the provisions of section 73 (2) by which section 92 and Rule 8, O. 1 of the Code of Civil Procedure, 1908, are repealed altogether in respect of religious endowments in general. I would retain the powers of the Advocate-General under section 92 of the Civil Procedure, 1908, are repealed altogether in respect of religious endowments in general. I would retain the powers of the Advocate-General under section 92 of the Civil Procedure, 1908, are repealed altogether in respect to the Advocate-General under section 92 of the Civil Procedure, 1908, are repealed altogether in respect to the Advocate-General regarding public charities. cedure Code. ''-Minute of Dissent by Mr. Govinda Raghava Iyer.

But the jurisdiction of Civil Courts in respect of endowments has always been preserved from the earliest times by the various Regulations and Acts. The Madras Regulation VII of 1817 did not provide for the finality of orders of the Board of Revenue or its Local Agents and the ordinary remedies of resort to Civil Courts by suitors was left unaffected.

It is to be noted that the provisions of S. 92 or 93 of the C.P.C. are virtually abrogated by this section with respect to religious endowments. The consent of the Advocate-General is no longer required, the consent of the Board being substituted instead.

Pending suits.—After the passing of the Religious Endowments Act, worshippers who had instituted suits before the passing of the Act can continue them. There is nothing in the Act which could take away the right of persons who were parties to pending actions at the time of the passing of the Act.1

Corresponding English Law.—"The object of the corresponding section of the English Charitable Trusts Act was to put an end to certain very scandalous proceedings on the part of individuals, who, ascertaining that there was a fund disposed for the purpose of charities which had been overlooked, and thinking that a considerable profit might be made in the way of costs, instituted proceedings which were not likely to produce good to any one."2

This section relates exclusively to the administration of trusts, and does not apply to Common Law rights, legal or equitable modes of enforcing Common Law rights, or any individual's equitable right not relating to the administration of a trust.3 The section, therefore, does not interfere with the right and powers of trustees of charity in their character of owners of property, nor does it interfere with the rights of masters employing servants.4

Under the corresponding section of the English Charitable Trusts Act it was held that the section had no application to the following cases:-

- (i) In cases of ejectment by the trustees of a against a tenant holding over.
- (ii) In cases of action of covenant against a tenant who does not pay his rent.5

⁽¹⁾ Gangadhara Mudaliar v. Govinda Ramanuja Pedda Jeeyangar, 108 I.C. 793=A.I.R. 1928 Mad. 905.

⁽²⁾ Lord Hatherley in Braund v. Earl of Devan, L.R. 3 Ch. 804; Holme v. Guy, 46 L.J.Ch. 223-225; In re Lister's Hospital, 6 D.M. & G. 186, Chilcott, p. 22.
(3) Rendall v. Blair, 59 L.J.Ch. 641; Holme v. Guy, 46 L.J.Ch. 223;

and see Rooke v. Dawson, (1891) Ch. 480. (4) Holme v. Gwy, 46 L.J.Ch. 223.

⁽⁵⁾ Bassano v. Bradley, (1896) 1 Q.B. 645; 65 L.J.Ch. 479.

(iii) In cases of proceedings by way of distress against a

defaulting tenant.

(iv) In cases of proceedings against a person who has not been properly appointed to an office and who persists in presenting himself there.1

(v) So too the section does not apply in cases of an action under a contract with the trustees or managers of a charity to enforce that contract.f

(vi) To an action by a servant against such trustees to restrain them from dismissing him, if it does not involve an administration of the trust.3

(vii) In like manner an action of trespass by or against the

trustees is not within the section.3

The grounds for removal of trustees which are set out in 53, are to be taken as expressive of the general law and are applicable to maths and excepted temples also.

Scope (Cases before Amending Act of 1946) .- The words in S. 73 (3) are much wider and more comprehensive than those occurring in S. 92 (3), C.P. Code. (1937) 2 M.L.J. 931. The effect of S. 73 is that a suit which could only be instituted by the Advocate-General or by some persons with his consent under S. 92, C.P. Code, must, when it relates to religious endowments governed by the Act, be instituted by the Religious Endowments Board or by some person having an interest and with the consent of the Hence a suit by a trustee to recover trust property from the alienees is outside the scope of S. 73. 55 M. 549=35 L.W. 156-1932 M. 234-62 M.L.J. 180. (As to trustees of Kattalais, see 97 I.C. 480=1927 M. 338. Hereditary archaka of temple-Dismissal by trustee-Suit in Civil Court to set aside dismissal-Maintainability. See . 48 L.W. 419-(1938) 2 M.L.J. 516.) The words "except as provided by this Act" mean "except under the provisions of this Act." There is no reason to construe the terms as being confined in their application to the procedure governing the suit for in their plain and natural sense, they are intended to lay down the substantive law also. 1933 M.W.N. 1235. (54 M. 1011; 1927 M. 338, Dist.). The words of Cl. (3) exclude the applicability of S. 92, C.P. Code, to a suit for the administration or management of a Kattalai which is a religious endowment under the Act. Such a suit is not, therefore, maintainable. (Desirability of amendment suggested.)

⁽¹⁾ Holme v. Guy, 46 L.J.Ch. 223; Rendall v. Blair, 59 L.J.Ch. 641; Alexander v. Drewitt and others, Times Law Rep., Vol. II, p. 762. (2) Rooke v. Dawson, (1891) 1 Ch. 480. (3) Rendall v. Blair, 59 L.J.Ch. 64; Fisher v. Jackson, 60 L.J.Ch. 482; Brittain v. Overton, 53 L.J.Ch. 299 n.; Alexander v. Drewitt and others, T.L.R. Vol. II, p. 762.

1933 M.W.N. 1235. See also 1927 M. 338. The Court has no power to settle a scheme in a suit brought under S. 73. The Act vests the power of settling schemes initially in the Board constituted under S. 10, which is a statutory body, and the Civil Court's jurisdiction is limited to modification or cancellation of schemes settled by the Board in the first instance or of schemes settled by the Court itself under the Act or deemed to be settled under the Act. I.L.R. (1945) Mad. 500-58 L.W. 657-A.I.R. 1945 Mad. 473=(1945) 2 M.L.J. 164. On a contention that in a private suit for the office of trustee the plaintiff can obtain a decree settling a scheme so long as the scheme involves only the method in which the plaintiff is to enjoy the office along with existing trustees. Held, that to prescribe a scheme by which the existing trustees should be deprived of their office, if only for a time is not within the competence of a Civil Court in its ordinary jurisdiction. A trustee could be removed only by a suit under S. 73 of the Act. The Court however will recognize and enforce a system of rotation which by the consent of co-trustees has been in existence for many years. But where no system of rotation exist the only course open to a co-trustee who wishes to have one established is to proceed under the provisions of the Hindu Religious Endowments Act, in the case of a religious institution and under S. 92, C.P. Code, in the case of other charitable trusts. 1938 M.W.N. 175-47 L.W. 764-A.I.R. 1938 Mad. 661-(1938) 2 M.L.J. 623. The expression "except as provided by this Act" should be construed as meaning "contrary to the provisions of the Act." So a suit. if not prohibited by the Act. is not barred even if it be not provided for by the Act. (97 I.C. 480, Foll.) 34 L.W. 254-1931 M. 801-61 M.L.J. 815. See also 1933 M.W.N. 1235. A class of suit to which S. 92 of the C.P. Code would not relate cannot be brought within the scope of the first part of S. 73 and a suit to establish a personal right as hereditary trustee cannot be deemed to be a suit in respect of the administration or management of the religious endowment to which the trusteeship appertains and is therefore not barred by S. 73. (46 B 101, Ref.) 34 L.W. 254=1931 M. 801=61 M.L.J. There is no provision in S. 73 (1) of the Act for appointing or removing the trustees of a religious endowment which is neither regarding a mutt or a temple nor does the Act make such a provision elsewhere. 1930 M. 216=58 M.L.J. 104=122 I.C. See now S. 73 (i) (a). Clause (e), S. 73 of the Act does not enable the institution of any suit of a class unprovided for by the rest of the section. (Ibid.) See also 1927 M. 338. Some worshippers of an excepted temple can maintain a suit on behalf of the general body of worshippers for a declaration that a certain article in the temple is a sacred one the sale of which would be a breach of trust and for an injunction restraining its sales, S. 73 of the Act is no bar to such a suit. An interim injunction restraining the sale of the article may and ought properly to be granted in such a suit. 43 L.W. 424=1936 M. 352=70 M.L.J. 315.

Suit under the section-Reliefs. -S. 73 having regard to the manner in which it has come to be framed and taken with the provisions relating to court-fees, is confined to cases in which the main relief falls under any of the Cls. (a), (b), (c) and (d) and covers relief only incidental to or ejusdem generis with the main reliefs and it is because it is to be confined to suits of such a simplified nature that the court-fee is made definite and limited to Rs. 50. It is not made too costly because it is inexpedient to do so where the relief is for the removal of a trustee or to vest property in a receiver, etc. But when it is sought to recover properties which may be worth lakhs of rupees and to recover monies as a result of taking accounts of gross mismanagement or as damages for some act of default, to permit such suits to be filed with a court-fee of Rs. 50 seems not to have been intended by the Legislature. Beyond the reliefs expressly mentioned in Cls. (a), (b) and (c) of S. 73 and any relief incidental to them no further relief can be prayed for in the suit. 1933 M.W.N. 1433=38 L.W. 902 Per Ramesam, O.C.J.—Suits merely to recover money found due by the defendant on the taking of accounts and to recover property belonging to the trust but in the possession of the defendant and to recover damages for a tort committed by the defendant, would always be maintainable under the general law and may not fall under S. 92, C.P. Code, even, and they centainly would not be suits relating to the administration or management of religious endowments, within S. 73 of Madras Act II of 1927, 1933 M.W. N. 1235. The plaintiffs, who were the worshippers of a temple, instituted a suit for a declaration that certain other persons known as sukhavasis were not entitled to any fixed share of the prasadams offered to the deity or to a cash payment in lieu thereof. They also prayed for an injunction restraining the defendant trustees and members of the devasthanam committee from recognising the right put forward by the sukhavasi defendants. It was contended that the suit was not maintainable by reason of S. 73 (3) of the Act. Held, that what the plaintiffs sought for was a declaration against certain third parties, strangers to the trust, that the suit did not seek to fetter the discretion or the right of the trustees or the committee to make charitable doles, including the giving of doles to the sukhavasi defendants; that the relief for injunction was merely consequential and did not alter the character of the suit

and that as the suit did not relate to the administration or management of the temple, it was not barred by S. 73 (3) of the Act. Per Newsam, J.—The Courts are prevented by S. 73 from accepting an invitation to interfere with the details of administration or to fetter the discretion of trustees in minor matters. (1937) 2 M.L.J. 931. (Applicability and scope—"Religious endowment" -Fund for renovation of temple and for maintenance of Vedapatasala-Amount used for both together without apportionment for severance—If falls under Act. See 69 M.L.J. 274.) The bar under S. 73 is only in respect of suits relating to the administion or management of the trust, i.e., proceedings against the trustee and not in respect of proceedings against the person who is wrongly in possession of the property in which the trust is interested. Where the claim by the trustee of a temple is for a declaration that defendant 1 had no right under the sale-deed taken by him from defendant 2 on the ground that the property is burdened with a service to the temple, held, that the suit is not barred by S. 73. 158 I.C. 883-42 L.W. 757-1935 M.W.N. 903=1935 M. 964

S. 73 on its very face does not authorise a suit to frame a scheme in respect of an excepted temple. Where in a suit by a worshipper to remove the trustee of an excepted temple and to appoint another trustee in his place, a compromise is entered into by the parties providing for a scheme for the future administration of the temple and the same is made a decree of Court, the decree is without jurisdiction and must be set aside. The fact that no objection was raised to the jurisdiction of Court to frame a scheme is no bar to the objection being raised in appeal. Since the decision of the question is one affecting the jurisdiction of the Court the appellate Court cannot refuse to adjudicate upon it merely because of an unwise and ill-advised concession made in the lower Court. 52 L.W. 962=(1940) 2 M.L.J. 858=1941 Mad. 287. A suit by the present trustees of a temple against the past trustees for a general account of their trusteeship allegations of misfeasance, melfeasance and nonfeasance is maintainable under the general law. To such a suit the previous consent of the Hindu Religious Endowments Board is not necessary. The general scope of S. 73 is the same as that of S. 92, C.P. Code, and the last paragraph of the former section (S. 73) is meant to refer only to the classes of cases referred to in S. 73 (1) and other sections of the Act. Suits which do not fall within the scope of these sections can be tried under the general law. 1943 M.W.N. 17=(1942) 2 M.L.J. 757=1943 Mad. 228. The words "administration or management" in S 73 (3) cannot possibly be taken to cover or include the case of a

dismissal of an archaka of a temple by the temple trustee. The administration or management must be with reference to the "religious endowment," i.e., with reference to the property mentioned in the definition of the expression "religious endowment" in S. 9 (11) of the Act and not with respect to the dismissal of an archaka. A suit by an archaka to set aside his dismissal by the trustee relates to a personal right and as long as there is no question relating to the administration or management of the endowed property, the suit cannot be held to be barred under S. 73 S. 73 cannot therefore bar a suit by an archaka for a declaration that the orders passed by the trustee dismissing him and the orders by the Board confirming the same are ultra vires and wholly illegal and unjust. 1942 M.W.N. 769-1943 Mad. 222=(1943) 1 M.L.J. 496. See also 1940 M. 493; 1940 M. 28. (Immovable properties charged for cost of religious service in temple-Suit by temple trustees for recovery of costs-Maintainability.) (1945) 1 M.L.J. 63.

By a consent statement before a Magistrate two groups of villagers undertook to celebrate the festivals of the village deity by carrying the idols separately so as to avoid any disturbance. When, however, the plaintiff's group was performing the festivals. the defendants unlawfully interfered and effectively prevented the plaintiff from having the festival conducted as contemplated by the consent order. On the question whether the plaintiffs were entitled to a permanent injunction in a Civil Court restraining the defendants from interference with the plaintiff's rights. that it was an elementary right of every worshipper of a public temple to have the usual festivals conducted in the usual manner; that the right is a civil right which every worshipper has as an individual; that he would be entitled to the protection of the Court in the exercise of his right that the suit was not a suit by one set of trustees against another set of trustees and that S. 73 of the Madras Hindu Religious Endowments Act was no bar to the suit. 58 L.W. 287=1945 M.W.N. 358=A.I.R. 1945 Mad. 234= (1945) 1 M.L.T. 300.

Sanction to legal proceedings-Practice under English Law .-Under English Law, subject to certain exceptions1 no legal proceedings in any Court may be taken for obtaining any relief order or direction concerning a charity, its property or income, except with the sanction of the Charity Commissioners.2

Halsbury's Laws of England, Vol. IV, pp. 311, 320.
 Charitable Trusts Act, 1853, S. 17. For a form of application to the Commissioners for authority to take legal proceedings, see Encyclopaedia of Forms, Vol. III, p. 457. S. 17, Charitable Trusts Act, prevents the

This rule applies to legal proceedings which either wholly or partially involve administration of the trusts of charity and to proceedings taken in pursutnce of a private Act of Parliament.2

Applications not requiring consent of Commissioners-English Law -Applications to the Court "in any suit or matter actually pending"3 actions, whether legal,4 or equitable to enforce common law rights or to enforce individual equitable rights not relating to

needless institution of proceedings whose object is merely to create costs. See Re Lister's Hospital, (1855) 6 De G. M. & G. 184, 186.

section, see Halsbury's Laws of England, Vol. IV, pp. 310-323.

(1) For examples of proceedings requiring the sanction of the Commissioners, see Re Jarvis' Charity, (1859) 1 Drew. & Sm. 97; Re Duncan, (1867) 2 Ch. App. 356 (petition for appointment of new trustees); Braund v. Devon (Earl), (1868) 3 Ch. App. 800 (action against trustees by persons claiming to participate in charity); Hodgson v. Forster, (1877) W.N. 74 (action by Minister and church wardens against former church wardens to enforce transfer of charitable legacy); A. G. v. Manchester (Dean and Canon,), (1881) 18 Ch.D. 596 (mandamus compelling accounts to be rendered of income applicable to charity); Benthall v. Kilmorey (Earl), (1883) 25 Ch.D. 39, C.A. (action by medical officer against committee of hospital claiming declaration that he held office during good behaviour); Re Stockport Ragged Industrial and Reformatory Schools, (1898) 2 Ch. 687, C.A. (petition to Court by trustees to sanction proposed mortgage of charity lands).

(2) Re Bingley Free School, (1854) 2 Drew. 283.

Under the English Law it is provided that Notice of Legal Proceedings as to any charity by any person, except the Attorney-General, is to be given to the Board, and that Courts are not to entertain proceedings as to charities, except upon certificate of the Board. See S. 17 of the Charitable Trusts Act, (1853) Chilcott, p. 21.

(3) Charitable Trusts Act, 1853, S. 17; Re Lister's Hospital, (1855) 6 De G. M. & G. 184, C.A., overruling Re Markwell's Legacy, (1854) 17 Beav. 615; Re St. Giles' and St. George's Bloomsbury, (1857) 27 L.J.Ch. 560; Re Poplar and Blackwall Free School, (1878) 2 Ch.D. 543 (applications respecting funds in Court). When a final order has been made on a petition, the matter is no longer actually pending (Re Jarvis' Charity, (1859) Drew. & S. M. 97; Re Ford's Charity, (1855) 3 Drew. 324; see also Re Duncan, (1867) 2 Ch. App. 356.

(4) Charitable Trusts Act, (1853) S. 17; Holme v. Guy, (1877) 5 Ch. D. 901; Alexander v. Drewitt, (1886) 2 T.L.R. 762; Bassano v. Bradley, (1896) 1 Q.B. 646 (actions of ejectment or to recover rent or arrears from tenants of charity estates). As to ejectment actions against Ministers of dissenting chapels by the persons in whom the chapels are vested, see Deo v. Jones, (1830) 10 B. & C. 718; Doe v. M'Kaeg, (1830) 5 Man. & Ry. 620; Doe d. Kischner v. Roe, (1838) 7 Dowl. 97; Doe d. Dickens v. Roe, (1838) 7 Dowl. 97; Doe d. Dickens v. Roe, (1838) 7 Dowl. 121; Doe d. Somers (Earl) v. Roe (1840) 8 Dowl 292; Doe d. Smith v. Roe, (1840) 8 Dowl 509; Doe d. Fishmongers Co. v. Roe, (1843) 2 Dowl (N.S.) 689; Doe v. Fletcher, (1828) 8 B. & C. 25.

(5) Holme v. Guy, (1877) 5 Ch.D. 901 (injunction against wrongful possession of charity property); Rendall v. Blair (1890) 45 Ch.D. 139, 155 Ch.D. 1

154, 155, C.A. (injunction to restrain trespass); contra, Thomas v. Harford, (1883) 48 L.T. 262 (consent of Commissioners required to action by charity trustees to prevent interference to light).

the administration of a charitable trust,1 applications to the Court for an order sanctioning the retention of land devised to a charity or the acquisition of land out of personal estate bequeathed to a charity for that purpose,2 applications where the trust is not charitable3 or for determining whether a trust is charitable or not;4 applications claiming any property or seeking any relief adversely to a charity;5 and actions concerning charities exempted from the Charitable Trusts Acts do not require the consent of the Commissioners.

Nor is such consent required where property belongs partly to an exempted and partly to a non-exempted charity, if the legal proceeding concerns only the exempted charity.6

Nature of Commissioners' consent -The certificate required is not to the effect that the Commissioners approve of the particular proposal, but that the application is made with their permission.7

Proceedings commenced without consent.-Proceedings taken without the necessary certificate of the Charity Commissioners are not dismissed immediately, but are ordered to stand over until it has been ascertained whether or not the certificate can be obtained.8

(3) Prestney v. Colchester Corporation, (1882) 21 Ch.D. 120. Re St. Giles' and St. Geroge's Bloomsbury, (1858) 25 Beav. 316; Re Shum's Trusts, (1904) 91 L.T. 192.

don, (1885) 28 Ch.D. 426, where the point was argued, but not decided.

(6) See Re Meyrick's Charity, (1858) 1 Jur. (N.S.) 438, explained in Re Dod's Charity, (1905) 1 Ch. 442, 448. It is otherwise where the proceedings concern the non-exempted charity. [A. G. v. Manchester (Dean

⁽¹⁾ Rendall v. Blair, (1890) 45 Ch.D. 139, 154, 155, C.A. at p. 160: Fisher v. Jackson, (1891) 2 Ch. 84 (injunction to restrain improper dismissal of schoolmasters); see also Benthall v. Kilmorey (Earl). (1883) 25 Ch.D. 39, C.A. where the question was discussed, but not decided; Lane v. Norman, (1891) 61 L.J.Ch. 149 where the question of the consent of the Commissioners was not raised.

⁽²⁾ Mortmain and Charitable Uses Act. (1891), S. 8; Re Church Patronage Trust, (1904) 2 Ch. 643, C.A.

⁽⁴⁾ Charitable Trusts Act, (1853) S. 17: Brittain v. Overton, (1877) 25 Ch.D. 41 (n); Benthall v. Kilmorey (Earl), (1883), 25 Ch.D. 39, 44, 45, C.A. See also Re Peel's (Sir Robert) School at Tamworth, (1868) 3 Ch. App. 543.

⁽⁵⁾ Re Wilson's Will, (1854) 18 Beav. 594; Glen v. Gregg, (1882) 21 Ch.D. 513, C.A.; Pease v. Pattinson (1886) 32 Ch. 154, and see A. G. v. Sidney Sussex College, Cambridge, (1886) 21 Ch. 514, (n.) where Lord Chelmsford, L.C., expressed an opinion to the contrary; Strickland v. Wel-

ceedings concern the non-exempted charity. [A. G. v. Manchester (Dean and Canons), (1881) 18 Ch.D. 596, 611.]

(7) Ex parte Watford Burial Board, (1856) 2 Jur. (N.S.) 1045.

(8) Re Bingley Free School, (1854) 2 Drew 283; Re Markwell's Legacy, (1854) 17 Beav. 618, 622; Re London, Brighton, and South Coast Rail Co., (1854) 18 Beav. 608, 609; Re Skeat's Charity, (1855) 25 L.J.Ch. 49; A. G. v. Manchester (Dean and Canons), (1881) 18 Ch.D. 496, 611; Rendall v. Blair, (1890) 45 Ch. 139; C.A.; Rooke v. Dawson, (1895) 1 Ch. 480; Re Dod's Charity, (1905) 1 Ch. 442, 448.

If the certificate cannot be obtained, the proceedings must be dismissed1 even trough all the parties assent to the application being heard2 or the question at issue is an urgent one.8

Proceedings by Attorney-General. - The sanction of the Charity Commissioners is not required to enable the Attorney-General, acting ex-officio, to make such applications and take such proceedings with respect to any charity in Courts.4

Proceedings by Attorney-General at instance of Commissioners.—The Charity Commissioners may certify in writing cases to the Attorney-General where it appears to the Board that the institution of legal proceedings is requisite or desirable with respect to any charity or the estates, funds property, or affairs thereof, and that under the circumstances it is desirable that such proceedings should be instituted by the Attorney-General. Thereupon, if the Attorney-General, upon consideration of the circumstances, thinks fit, he will institute and prosecute the requisite proceedings by action, petition, or application to a Judge in chambers or to Court, as the case may be.5

Proceedings by majority of trustees.—If authorised by the Commissioners, the majority of the trustees of a charity may take or defend any legal proceedings as if they were sole trustees, and the death or removal from office of any such trustee does not cause the discontinuance of the proceedings.6

Sanction of compromises. - The Commissioners may sanction compromises of claims on behalf of a charity or against a charity or its trustees.8

Pleading sanction. - The certificate of the Charity Commissioners ought to be obtained before the commencement of proceedingso and the plaintiff should plead that it has been obtained. 10

Motion for stay if no sanction obtained. - Where an action relating to a charity has been commenced without the certificate of

⁽¹⁾ Rendall v. Blair, (1890) 45 Ch.D. 139, C.A.
(2) Glen v. Gregg, (1882) 21 Ch.D. 513, C.A.
(3) Ex parte Watford Burial Board, (1856) 2 Jur. (N.S.) 1045.
(4) Charitable Trusts Act, 1853, S. 43; Charities Procedure Act, 1812, 852 Geo. 3, c. 108. See also S. 4 supra.
(5) Charitable Trusts Act, 1853, S. 20; and see, e.g., A. G. v. Christ's Hospital (Governors), (1896) 1 Ch. 879 (adjourned summons); Re Menser, (1905) 1 Ch. 68.

⁽⁶⁾ Charitable Trusts Act, 1869, S. 13.
(7) Charitable Trusts Act, 1853, S. 23.
(8) Charitable Trusts Amendment Act, 1855, S. 31. The claims referred to are, it is conceived, claims by persons who do not claim to be beneficiaries.

⁽⁹⁾ Rendall v. Blair, (1890) 45 Ch.D. 139, C.A. (10) Braund v. Devon (Earl), (1868) 3 Ch. App. 800.

the Charity Commissioners, a motion for stay of proceedings is the simplest way of testing the question whether such certificate is or is not required.1

Proceedings commenced on report of Assistant Commissioner .-The Charity Commissioners may also, without previous notice being given to them, authorise or direct proceedings to be taken whenever upon the report of an Assistant Commissioner2 or otherwise it appears expedient.3

Proceedings by Commissioners to recover property .- The Charity Commissioners may themselves, by action, petition, or other proceedings sue on behalf of a charity for the recovery of any property which appears to belong to the charity.4

The Court disapproves of charity actions being got up by public

meetings and supported by public subscriptions.5

Injunctions.—Breaches of trust, actual or contemplated, may be restrained by injunction.6

When necessary, an action for an injunction may be brought by a trustee against his co-trustees.7

74. The costs, charges and expenses of and incidental to any suit or application under this Act or Cost of suits, etc. to any appeal from a decree or order passed in such suit or on such application shall be in the discretion of the court, which may subject to the provisions of section 68 direct whole or any part of such costs, charges and expenses to be met from the property or income of the endowment concerned or to be borne and paid in such manner and by such persons as it thinks fit.

8774-A. The costs of and incident to all proceedings before the Board shall be in the discretion Cost of proceedings, of the Board, which shall have full power ctc. to determine by whom or out of what funds and to what

⁽¹⁾ Hodason v. Forster, (1877) W.N. 74. (2) See Charitable Trusts Act. (1887) 850 & 51 Vict. c. 498, S. 2 (3).

⁽³⁾ Charitable Trusts Act. 1853 (16 & 17 Vict. c. 837), S. 19.

⁽⁴⁾ Charitable Trusts (Recovery) Act. 1891 (54 & 55 Viet. c. 17), S. 3; Re Herbage Routs, Greenwich. (1896) 2 Ch. 811.

⁽⁵⁾ A. G. v. Worcester (Bishop), (1851) 21 L.J.Ch. 25. (6) Riaall v. Foster, (1853) 18 Jur. 39 (to restrain improper mortgage by Charity Trustees); A. G. v. Welsh, (1844) 4 Hare 572 (to prevent user of chapel for unauthorised form of worship).

⁽⁷⁾⁾ Re Cherisen Market, (1819) 6 Price 261: Perry v. Shipway, (1859) 4 De. G. & J. 353, where one improper retainer of a chapel by the minority of the trustees was prevented by the majority.

(8) Inserted by S. 9, Madras Act IV of 1930.

extent such costs are to be paid; and the order passed in this regard may be transferred for execution to the court and shall be executed by the court as if the order had been passed by itself. 7

Scope of Section.—The Select Committee said:—

"We have redrafted the clause relating to suits in accordance with the changes we have carried out in the Bill. The clause relating to costs (70) has been modelled on section 8 of the Religious and Charitable Trusts Act of 1920."1

When costs allowed out of charity funds. - The costs of making an unsuccessful application to the court in a charity matter may be given out of the charity funds, if there are substantial grounds for the application, though it may be induced by private interest,2 or even if the grounds of the application are based on a bona fide misconception of law.3

The court may also make an order that costs should come from the trust funds in the case of trustee defendants if there have been no improper conduct on their part. But the court would refuse to disturb the decision of the Taxing Master that certain items ought not to come out of trust funds.4

The costs of vexatious proceedings' are not allowed out of the charity funds.

In some cases unsuccessful applications in charity matters are dismissed without costs.6

Costs of unnecessary parties.—Where an unnecessary party, by setting up a claim, renders service of a petition upon him necessary, costs will not be paid to him out of the charity fund.7

Where a person who is personally interested in a charity attends proceedings before a Master, he is entitled to this costs.8

If not so inttrested he ought not to go before the Master at all, at any rate, if he does attend he will not get his costs out of the

⁽¹⁾ Report of Select Committee.

⁽²⁾ Re Stories' University Gift, (1860) 2 De G. F. & J. 529=30 L. J. (Ch.) 193.

⁽³⁾ Re Betton's Charity, (1908) 77 L.J. (Ch.) 193.
(4) Advocate-General v. Moulvi Abdul, 20 B. 301.
(5) Re Chertsey Market, (1819) 6 Price 261, where there was great delay in bringing forward charges of breach of trust against the representatives of deceased trustees and the petition was accordingly held vaxatious.

⁽⁶⁾ A. G. v. Stewart, (1872) L.R. 14 Eq. 17, 25.

⁽⁷⁾ Re Shrewsbury School, (1849) 1 Mac. & G. 86. See Halsbury, Vol. IV, p. 355.

⁽⁸⁾ Halsbury, Vol. IV, p. 355.

charity fund, unless he can show that the charity is likely to derive benefit from his attendance.2

Costs of appeals. - As a rule, in the case of appeals, the granting of costs of all parties out of charity funds tends to encourage groundless appeals.3

Appeals from Commissioners .-- In the case of an appeal from an order of the Charity Commissioners, the Court may make any order respecting the costs, charges or expenses incident to the appeal and may also, before hearing or proceeding with it, require from any appellant other than the Attorney-General proper security for such costs, charges and expenses as may be eventually payable by the appellant.4

Trustees of charities will not be visited with costs because of the misapprehension of the Commissioners as to the contruction of a public statute.5

Costs of Advocate-General.—The costs of the Advocate-General as between attorney and client come, as a rule, out of the trust fund.6

N.B.-S. 74-A. The necessity for the enactment of this new section has been stated as follows:- "Parties coming up before the Board are not able to get orders as to costs at the conclusion of the cases enquired into by it. It is but fair that provision should be inserted to govern cases where the Board feels that the ends of equity and of justice require the awarding of costs in connexion with its proceedings."—(Statement of objects and Reasons.)

75. Where the administration of a religious endowment is governed by any scheme settled under section 92 of the Code of Civil Procedure, Schemes settled under section 92 of the 1908, such scheme shall, notwithstanding Civil Procedure Code. any provisions of this Act which may be inconsistent with the provisions of such scheme, be deemed to

(1) Re Shrewsbury School, per Lord Cottenham, L.C., at p. 334.

(3) Bruce v. Deer (Presbytery), (1867) I.R. 1 H.L. Sc. & Div. 96, per Lord Cranworth, at p. 98.

(4) Charitable Trusts Act, 1860, S. 8. (5) (See remarks of Sir G. Jessel in Moore v. Clench, (1875) L.R. 1 Ch.D. 447 at p. 451=45 L.J. (Ch.) 80.

For costs in charity cases, see Morgan and Winztztwig's Law of Costs, 2nd Ed., p. 204; Chilcott, pp. 170-175; 232, 234, 235; Halsbury, Vol. IV, pp. 354-356.

(6) See order in Parmanandas v. Venayek, (1878) I.L.R. 7 B. 19=

9 I.A. 86 (P.O.).

⁽²⁾ Ibid., at p. 335. See also R. S. O., Ord. 55, Rr. 40-43, as to costs of attendances at Chambers.

be a scheme settled under this Act; and such scheme may be modified or cancelled in the manner provided by this Act.

Scope of section.—"During recent years a considerable number of schemes have been settled by courts for the administration of specific religious endowments. Many of these schemes have proved unsatisfactory and it is felt in many quarters that administration under such schemes is even worse than administration under the Act as it stands". An ex-Advocate-General of Madras expressed himself as follows:—

"My experience both before and after I became Advocate-General is that schemes framed under section 92, Civil Procedure Code, by the courts have not in a majority of cases proved to be successful. They are not more workable or more efficient than the statutory scheme of committees and trustees under the Act of 1863 or the system of hereditary trusteeships."

The Select Committee said:—"The question of the application of the Act to institutions governed by schemes already settled by courts under section 92 of the Civil Procedure Code has engaged our anxious consideration. The Bill is an attempt at a comprehensive enactment of the law that should govern the administration of religious endowments, and itself provides for the making and alteration of schemes. Many of the schemes framed by courts already have failed to secure efficient management or control. We consider that it is necessary that power should be taken to cancel or modify schemes framed by courts which are either unworkable or have proved unsatisfactory. This clause declares such schemes to be schemes framed under the new law and provides for their modification or cancellation in accordance with the procedure prescribed therein."

⁽¹⁾ See Statement of Objects and Reasons.

⁽²⁾ Report of the Select Committee.

The following extracts from the minutes of dissent of members of the Select Committee may also be noted:—

[&]quot;The provisions of S. 75 relating to endowments governed by existing schemes are neither clear nor desirable. The requirements of the case will be sufficiently met if the Central Board is enabled to apply to the Court for the modification or cancellation of the scheme."—[Minute of Dissent by Mr. Ramachandra Rao.]

[&]quot;As regards institutions for which schemes have already been framed by the Courts I do not think that it should be in the power of the Board to get them scrapped. Under this clause when a scheme has been already settled for a religious endowment by the Court it must be considered to have been settled or decreed under the new Act so that the other provisions of the Act will apply to it, i.e., leave it to the Board and to the Committees in the case of temples under their control to modify or cancel the scheme. Most of the temples for which schemes have been already settled by the Courts will be Committee Temples under the new Act so that the interven-

Section 75, Religious Endowments Act, cannot be construed as having a retrospective effect with regard to a scheme settled by a Court under S. 92, C.P. Code before the enactment of the said Act.¹

Proceedings under Act I of 1925—Continuation under new Act.—The only provision in Act II of 1927 about continuation of proceedings begun under the Act of 1925 is S. 7 (2). It says that all proceedings taken under the earlier Act may be continued after that Act in so far as they are not inconsistent with the provisions of this Act. There is nothing in S. 75 which is inconsistent with continuing the application presented already. In sush cases it is not necessary to convert the applications into suits nor is there any question of court-fees. 140 1. C. 769—36 L.W. 883—1932 M.W.N. 1120—63 M.L.J. 780.

Applicability to prior Proceedings.—S. 75 was not intended to be retrospective and could apply only to proceedings taken after it had come into force. 140 1.C. 769—36 L.W. 883—1932 M.W.N. 1120—63 M.L.J. 780.

[75-A. In any scheme settled by a court, whether before

Board to exercise powers of administration vested by certain schemes. or after the passing of this Act, under section 92 of the Code of Civil Procedure, 1908, unless there is anything repugnant in the subject or context, all powers of ad-

ministration vested by such scheme in any court, judge committee or other authority or person shall be deemed to have been vested in the Board and the Board shall notwithstanding any provision of this Act, exercise such powers in accordance with the said scheme.] (Inserted by Madras Act X of 1946.)

Alienation of immovable trust property.

Alienation of immovable trust property.

Alienation of immovable property belonging to any [math, temple or specific endowment]²

shall be valid or operative unless it is necessary or beneficial to

(1) Chinnan Chettiar v. Sundaresa Ayyar, 115 I.C. 54=A.I.4. 1929

Mad. 322.

tion of the Courts is altogether removed. No justification was made out for this extraordinary provision. I think that the requirements of the case will be sufficiently met by enabling the Board or even the Committee to apply to the Court that has settled the scheme to modify its provisions whenever in the opinion of the Board or the Committee as the case may be, a modification is found necessary—[Minute of Dissent by Mr. Govinda Raghava Iyer.]

⁽²⁾ Substituted by Madras Act, X of 1946.

the [math, temple or specific endowment]1 and is sanctioned 1[by the Board].

- (2) The trustee of the [math, temple or specific endowment]1 or any person having interest may, within one year of the date of the order of the Board under sub-section (1), apply to the court for modifying or cancelling such order.
- (3) The order of the Board under sub-section (1) when no application is made under sub-section (2) and the order of the court when such application is made shall be final.

Scope of section -The provision in section 76 of the Act requiring trustees of temples and maths to obtain the sanction of the Board, for alienation of properties in certain cases is very wholesome as all those who know how unscrupulous many trustees have been in this matter in the past will realize.2

The Select Committee said .- "We consider that a trustee should obtain the Board's sanction for every substantial alienation of immoveable trust property, and that an appeal to the court should be allowed against orders passed in this behalf by a Board or committee."3

(1) Substituted by Madras Act X of 1946. N.B.—In section 76 for the words "math or temple" wherever they occur, the words "math, temple or specific endowment" are substituted; in sub-section (1) for the words "by the Board in the case of maths and excepted temples and by the Assistant Commissioner in the case of other temples", the words "by the Board" are substituted; and in sub-sections (2) and (3), the words "or Assistant Commissioner" are omitted by Madras Act X of 1946.

(2) First Report of the Rel. End. Board, p. 20.

(3) Report of the Select Committee.

The condition of temples at the time of the commencement of the Board's works under this Act and the necessity for this section has been described as follows:-

"Proper accounts of receipts and expenditure were seldom maintained and surplus moneys were not properly invested but lent out without proper securities, and the payment of interest was not in many cases insisted on. Temple lands were leased out in favour of the relations and friends of the trustees (or in some cases to co-trustees) on terms ruinous to temples. Foregoing loan amounts or rents as irrecoverable was a very normal feature.

Alienations of temple properties on inadequate grounds or for personal ends were also very common. In cases where temples had more than one trustee and factions were prevalent, the trustees could not, or would not, do their work properly with the result that neglect of services on the part of servants, alienation of service inam lands and resumptions thereof continued to be rife. By these causes several temples fell into ruins and performance of puja ceased.

This description of affairs was true not only in respect of temples that were not placed under committees but also applied almost equally to temples supposed to be under their control. Generally speaking, even committees, Effect of the section.—It was held prior to the passing of this Act that a trustee of a public trust has a first charge on the trust properties for the purpose of reimbursing himself for advances properly made for the trust. Under this section it would appear that no such charge would be created unless previous sanction is obtained.

Alienation of debutter property under Hindu Law.—(1) As a general rule of Hindu law, property dedicated to religious uses is inalienable. It is competent, however, for the shebait or mohunt in charge of the property, in his capacity of shebait or mohunt and as manager of the property, to incur debts and borrow money on a security of the property for legal necessity, for the proper expenses of keeping up the religious worship, and for the benefit and preservation of the property, his authority being in this respect analogous to that of a manager for an infant heir as defined by the Judicial Committee in Hunooman Persad's Case.³

A shebait or mohunt has power to sell, mortgage, or grant leases of debutter property. But the power also can only be exercised in a case of need or for the benefit of the institution. Except in these cases he cannot sell or mortgage the debutter property, or grant a permanent mokarrari lease thereof, though he may create proper derivative tenures and estates conformable to usage.

which were not dormant failed to exercise real control and supervision for want of funds or on other grounds, such as want of adequate strength on the committees or the existence of faction among the members. Instances were also found of members themselves sharing the spoils of misappropriation on the part of the trustees. In the case of several committees there were no offices, nor office-bearers, nor lists of temples under their control, nor any information as to the trustees in charge thereof. In some cases the very existence of committees had faded from the memory of people and had to be traced from the records of revenue offices and Courts of justice.

Such in brief was the chaotic condition of temples and temple committees to the amelioration of which the attention of the Board had to be directed

as soon as it began to function.

It is unnecessary to refer in detail to the state of maths, for the neglect by many of the Matadhipathies of their functions and the chaos in their affairs brought about not only by mere neglect but also by deliberate acts of maladministration and misbehaviour are too well known to require repetition here. 3.

(1) Kaliba Mavulvija v. Saran Bivi, 38 M. 260=28 I.C. 290=28 M. L.J. 347.

(2) See Fell v. Official Trustee, (1898) 2 Ch. 44=67 L.J. (Ch.) 385.

Non-excepted temple—Lease by trustee sanctioned by temple committee

—Power of Board to cancel under S. 34. See A.I.R. 1940 Mad. 10=(1940)

1 M.L.J. 28; see also 50 L.W. 651=(1939) 2 M.L.J. 924.

(3) 6 M.I.A. 393.
(4) Prosunno Kumari v. Golab Chand, (1875) 2 I.A. 145; 14 Beng.
L.R. 450 (Pledge); See also Mahant Jai Krishna Puri v. Bhukhae Gope,

The phrase "benefit of the estate," as used in the decisions with regard to the circumstances justifying an alienation by the manager for an infant heir or by the trustee of a religious endowment cannot be precisely defined, but includes the preservation of the estate from extinction, its defence against hostile litigation, its protection from inundation, and similar circumstances.

In Abhiram v. Shyama Charan² the point for decision was, whether a permanent mokarrari lease granted by a mohunt was valid. It was held by the Judicial Committee that it was not as there were no special circumstances of necessity in that case to justify such a lease. In the course of the Judgment their Lordships said:—

"The second question is whether the mohunt had power to grant a mokarrari pottah of the mauzah. It is well settled law that the power of the mohunt to alienate debutter property is, like the power of the manager for an infant heir, limited to cases of unavoidable neces ity. In the case of Kunwar Durganath Roy v. Ram Chunder Sen, a mokarrari pottah of debutter land was supported on the ground that it was granted in consideration of money said to be required for the repair and completion of a temple for which no other funds could be obtained. But the general rule is that laid down in the case of Shibessouree Debia v.

⁶ Pat.L.J. 638; Muthuswami Iyer v. Sree Sreemethanithi Swamiyar, 38 M. 356; Ram Chandra Pande v. Ram Krishna, 33 Cal. 507. Where certain property is admittedly endowed property, persons ostensibly in possession for and on behalf of the foundation have no power to make gift of any portion of the property to any one. Biram Das v. Mangal Singh, A.I.R. 1929 Lah. 868 (2). Shebait or mahant has power to sell mortgage or grant leases of debutter property in case of need or for the benefit of the institution. 2 I.A. 145. Sec also 6 Pat.L.J. 638; 38 M. 556; 33 C: 507; 36 C. 1003; 36 I.A. 148; 13 M.I.A. 270; 48 I.A. 302=44 M. 831 (P. C.); 44 I.A. 147=40 M. 709 (P.C.). Scope of the phrase "Benefit of the estate". Sec 44 I.A. 147 (155)=40 M. 709 (718) (P.C.). Temple trustees—Mckanom by one only—Validity—Power of Board to authorise alienation. Sec (1937) 2 M.L.J. 358. Burden of proving necessity is on the alienee, the rule being the same as in the case of an alienee from the manager for an infant heir. 2 C. 341 (351-352)=4 I.A. 52 (62-64) (P. C.). Where the validity of a permanent lease granted by a shebait comes in question a long time after the grant, the Court should assume that it was made for necessity. 49 I.A. 54=46 B. 481 (P.C.) (lease impeached after 100 years).

⁽¹⁾ Palaniappa v. Deivasikamany, 44 I.A. 147 (155)=40 M. 709 (718)

⁽²⁾ Abhiram Goswami v. Shyama Charan Nandi, 36 C. 1003=36 I.A. 148 (P.C.).

⁽³⁾ Prosunno Kumari v. Golap Chand, 14 Beng.L.R. 450=2 I.A. 145 (P.C.).

⁽⁴⁾ I.L.R. 2 C. 341=4 I.A. 52 (P.C.).

Mothooranath Acharjo¹ that apart from such necessity 'to create a new and fixed rent for all time, though adequate at the time, in lieu of giving the endowment the benefit of an augmentation of a variable rent from time to time, would be a breach of duty' in the mohunt."

Where an alienation is made of debutter property, the burden lies on the alienee to prove either that there was a legal necessity in fact, or that he made proper and bona fide enquiries as to the existence of such necessity and did all that was reasonable to satisfy himself as to the existence of such necessity. In fact, the rules as to burden of proof in the case of an alienee from a shebait or mohunt are the same as those which apply to the case of an alienee from the manager for an infant heir.²

Where the validity of a permanent lease granted by a shebait comes in question a long time after the grant, so that it is not possible to ascertain what were the circumstances in which it was made, the Court should assume that the grant was made for necessity so as to be valid beyond the life of the grantor.³

"It is only in an ideal sense that property can be said to belong to an idol, and the possession and management of it must in the nature of things be entrusted to some person as shebait or manager. It would seem to follow that the person so entrusted of necessity be empowered to do whatever may be required for the service of the idol and for the benefit and preservation of its property at least to as great a degree as the manager for an infant heir. If this were not so, the estate of the idol might be destroyed or wasted, and its worship discontinued for want of the necessary funds to preserve and maintain them."

Except for unavoidable necessity, the head of a math cannot create any interest in the math property to enure beyond his life.⁵ A permanent lease of temple lands at a fixed rent, or rent fee for a premium, whether the lands are agricultural lands or a building site, is valid only if made for a necessity of the institution. It

^{(1) 13} M.I.A. 270.

⁽²⁾ Kunwar Doorganath v. Ramchunder, (1876) 2 C. 341, 351, 352-4 I.A. 52, 62-64.

⁽³⁾ Bawa Magniram v. Kasturbhai, 49 I.A. 54=46 B. 481 (lease im-

peached after 100 years).

Where a lease is advantageous to the debutter state the Court is not bound to set it aside though there may be slight irregularities in granting the lease. Srish Chandra Bancrjee v. Debendranath Bancrjee, 50 C.L.J. 333=A.I.R. 1929 Cal. 828.

⁽⁴⁾ Prossuno Kumari v. Golab Chand, (1875) 14 Ben.L.R. 453, 469; 2

I.A. 145.
(5) Vidya Varuthy v. Balusami, 48 I.A. 302=44 M. 831 (P.C.).

cannot be justified by a local custom, or by a practice of the institution, to grant lands, in that manner.1

English law — The English Act places in the hands of the Charity Commissioners the control over dealings with the corpus of charities falling within the jurisdiction, by forbidding trustees to make any sale, mortgage, or charge of the charity estate, or any long lease thereof without the approval of the Board, or the express authority of Parliament, or of a Court of competent jurisdiction or according to a scheme legally established.²

Powers to sell, mortgage, charge, or lease beyond the aforesaid limits, contained in an original trust deed or a Crown Charter, are not now exercisable without the approval of the Board.³

One effect of this section is that trustees, who outspend the income of a charity estate, have no right to be recouped out of future income.4

In authorising a mortgage, the Board must order provision for discharging the debt within a definite period.⁵

Principle of English law governing sales before 1853.—Previous to the passing of the Charitable Trusts Acts the principle governing the disposal by trustees of lands belonging to a charity was as follows: Trustees were bound to a provident administration of the charity property as would best promote and maintain the charitable purposes of the founder.

Powers of Commissioners to authorise leases, mortgages, etc., under the English Charitable Trusts Act, 1853.—Section 21 of the English Charitable Trusts Act (1853) relates to the management of charity lands or estates, more particularly, to the letting of such lands or estates, "on building, repairing, improving, or of other leases" and to the raising of money by mortgage of such lands or estates for improvements, etc. It enables the Commissioners to authorise the granting of leases or the doing of any other act as therein mentioned, notwithstanding anything to the contrary in the deed of trust regulating the charity by sec. 26 of that Act such

⁽¹⁾ Palaniappa v. Deivasikamony, 44 I.A. 147=40 M. 709. As to the execution of simple money decree against the head of a Math, see Shamker v. Vengappa, 9 B. 422; see also Prosunno Kumari v. Golab Chand, 2 I.A. 145=14 Beng.L.R. 450; Gnana Sambanda v. Balagopal, 29 M. 553.

⁽²⁾ Charitable Trusts Act (1855), S. 29.
(3) Re Mason's Orphanage, (1896) 1 Ch. 54, Stirling, J.; on appeal 596 (C.A.); A. G. v. National Epileptic Hospital, (1904) 2 Ch. 252=73

L.J. (Ch.) 677.

(4) Fell v. Official Trustee of Charity Lands, (1868) 2 Ch. 44 [38 M. 260=28 I.C. 290=28 M.L.J. 347 would not now be good law.]

⁽⁵⁾ Charitable Trusts Act, 1855, S. 30. The period fixed in England is 30 years.

⁽⁶⁾ Attorney-General v. Mayor of Newark, 1 Hare 400; Chilcott, p. 49.

leases have the like effect and validity as if they had been authorised by the express terms of such trust.

Prior to the passing of this Act. the same principle which governed the case of a sale of charity lands by trustees, governed also that of charity property. The trustees were bound to a provident administration of such property for the benefit of the charity. such as would best promote and maintain the purposes of the founder 1 but it was incumbent on those claiming the benefit of the alienation to show that it was beneficial to the charity.2 The trustees. however, were bound to follow the directions (if any) in their instrument of trust,3 but if in course of time such directions became prejudicial to the charity, the Court could direct a new mode of management.4

This section, therefore, enabled the Commissioners to authorise the truseees of a charity to grant leases and to do other acts in the management of the charity property which they were unable to do under their instrument of trust.

Powers of commissioners under the English Trusts Act, 1853 .-Under the English Charitable Trusts Acts, the commissioners may, in certain circumstances, sanction sales.5 mortgages6 leases7 and exchanges of charity estates, the purchase of sites for charitable institutions from persons under disabilities.9 or the purchase of land generally for the benefit of a charity. 10

Power to sell and exchange implies power to lease .- In a case where a corporation has power by a private Act of Parliament to sell and exchange land, it was held that a power to lease the same land and give an option of purchase to the lessee was implied.11

(1) Attorney-General v. Warren, 1 T. & R. 216.
 (2) Attorney-General v. South Sea Co., 4 Beav. 458.

(3) Ward v. Hinwell, (1862) 3 Giff. 547.

(4) Attorney-General v. Wynarston Hospital, (1849) 12 Beav. 113.

(5) Charitable Trusts Act, 1853, Ss. 24, 26; Charitable Trusts Amend-.. ent Act. 1855. Ss. 29, 38.

(6) Charitable Trusts Act, 1853, S. 21; Charitable Trusts Amendment Act, 1855. S. 29.

(7) Charitable Trusts Act, 1853, Ss. 21, 26; Charitable Trusts Amendment Act. 1855. Ss. 16, 29, 38, 39.

(8) Charitable Trusts Act. 1853. Ss. 24, 26; Charitable Trusts Amendment Act. 1855. S. 38. Halsburv. Vol. IV, p. 313.

(9) Charitable Trusts Act, 1853, S. 27.

(10) Charitable Trusts Act, 1853, S. 21.

(11) Re Female Orphan Asulum, (ibid). Although the property devoted to religious purposes is inalienable, it is competent to the Court to direct the sale of such property if it is satisfied that the loan was raised for a necessary purpose. It cannot be said as a rule of law that in every case mortgaged by a shebait or Mahanth of an endowment the only decree that the Court can pass is a decree entitling the plaintiff to realise his

Lease.—Trustees are only partially restrained from leasing, and they have power to make or grant leases which do not exceed five vears.

Permanent lease. - Where the lease did not stipulate for a fixed rent but the only stipulation was that the tenancy was to be permanent so long as rent was regularly paid but the rent itself was liable to enhancement according to law, held, that the lease was within the competence of the shebait and that it was binding on the succeeding shebait.1

Partition. - As to partitions the Board have no express power to authorise partitions, though they have power to authorise payments by way of equality of partition.2

Power to authorise repairs and improvements .- The Charity Commissioners usually require any capital expenditure under this head to be recouped out of income.3

As to purchase of land.—The power to authorise purchase of land for charity is included, though not expressly, under the general power to authorise the application of moneys belonging to any charity to any purpose or object which the Board consider beneficial to the charity, and which is not inconsistent with the trusts or intention of the foundation.4

Sites for buildings for the purposes of the charity may, in cases involving disability or defect in title on the part of a vendor, be purchased with the consent of the Commissioners.5

Compromise. - Under S. 23 of the English Charitable Trusts Act, here special circumstances exist, the Commissioners have

claim out of the rents and profits of the estate by having a receiver appointed. Where there were difficulties in appointing a receiver appointed.

Where there were difficulties in appointing a receiver, Held that a decree for sale should be passed. (8 P.L.T. 440 (P.C.) Ref.) Mahabir Das v. Jamuna Prasad Sahu, 9 Pat.L.T. 553=A.I.R. 1928 Pat. 543.

(1) Bhabani v. Suchitra, 51 C.L.J. 25=A.I.R. 1930 Cal. 270. See also Sheik v. Renuka, 1927 M.W.N. 875=108 I.C. 416=A.I.R. 1927 Mad.

(2) See, however, Tudor, 3rd ed., pp. 549 and 550.

^{1188.} A permanent lease granted by the head of a Mutt in respect of an item of property which is a part of the general properties of the Mutt would enure for the life time of the Matathipathi and would be good to that extent. In such cases a distinction between the position of the head of the Mutt as regards any property shown to have vested in him on specific trust for a specific purpose and his position as regards the general endowment to the Mutt should be carefully kept in view. (Sundaram Chetty, J.) Sri Chidambara Sivapragasa Pandara Sannadhi v. Somasundaram Pillai, 1929 M.W.N. 840.

⁽³⁾ Tudor, 3rd Ed., p. 486.
(4) See Tudor, 3rd ed., pp. 494 and 572.
(5) Charitable Trusts Act, (1853), S. 27.

power to effect an exchange or a partition of charity lands by way of compromise.1

Power of advice. - The Charity Commissioners are authorised to receive and consider applications for their advice and direction concerning charities, and persons acting on their advice are indemnified.

Carrying out orders of Commissioners-English law .- The Charity Commissioners may, when they order a sale3 or exchange3 of charity lands or a sale of a charitable rent-charge or annuity charged on land,4 give directions for the investment of the purchase money or money received by way of equality of exchange5 but the trustees are the proper parties to carry out any orders made by the Commissioners relating to investment.6

Removal of officers .- Commissioners may authorise charity trustees to remove officers from their posts and to charge the salary of any successor or any of the revenues of the charity with retiring allowances.7

Relative Scope .- S. 76 must be regarded as an exception to S. 34: S. 76 cannot be read as being subject to S. 34. Where a temple committee has sanctioned a lease by the trustee of a temple which is non-excepted the Endowments Boardhas no power to cancel it under S. 34 of the Act. The Board may, however call for a report with a view to possible action under S. 76. I L R. (1940) Mad. 388-50 L.W. 651-A.I.R. 1940 Mad. 10-(1940) 1 M.L.J. 28.

of the Act to endowments partly religious and partly secular.

77. (1) Where an endowment has been made or property given for the support of an institution which is partly of a religious and partly of a secular character or for the performance of any service or charity connected therewith, or

where an endowment made or property given is appropriated partly to religious and partly to secular uses, the Board may notwithstanding anything contained in the

⁽¹⁾ See Chilcott. p. 48.

⁽²⁾ Charitable Trusts Act, 1853. S. 16.

⁽³⁾ Charitable Trusts Act, 1853 (16 & 17 Viet. c. 137), S. 24.

⁽⁴⁾ Ibid. S. 25. (5) Ibid., S. 24.

⁽⁶⁾ Charitable Trusts Amendment Act, 1855 (18 & 19 Vict. c. 124)

⁽⁷⁾ Charitable Trusts Act, 1853, S. 22. See also Charitable Trusts Act, 1860, Ss. 2, 6 8, 13, 14; Halsbury, Vol. IV, p. 314.

Endowments and Escheats Regulation, 1817, determine what portion of such endowment or property or of the income therefrom shall be allocated to religious uses. Such portion shall thereafter be deemed to be a religious endowment and its administration shall be governed by the provisions of this Act.

[If any dispute arises as to whether an institution or endowment is one to which sub-section (1) applies, such dispute shall be decided by the Board.] (Added by Madras Act X of 1946.)

(2) Any party affected by an order under sub-section (1) may within such time as may be prescribed apply to the court to modify or set aside such order but, subject to the result of such application, the order of the Board shall be final.

This is an adaptation of the language of section 21 of Act XX of 1863 and is in our opinion necessary for extricating the religious from the charitable portion of a mixed endowment. (Report of Sub-Committee).

The effect of S. 77 is to keep outside the operation of the Act any endowments, partly religious, partly secular, in respect of which the Board has not made an allocation to religioususes; when that has been done the portion allocated becomes religious endowment amenable to the provisions of the Act and until it is done, no portion is amenable. If this be so S. 73 (2) does not take the trust out of the optration of S. 92, Civil Procedure Code. 122 I.C. 337=1930 M. 216=58 M.L.J. 104.

Putting trustee in specific endowment connected therewith or has been appointed to discharge the functions of a trustee in accordance with the provisions of this Act, and such person is resisted in or prevented from obtaining possession of the math, temple or specific endowment concerned or of the records, accounts and properties thereof by a trustee, office-holder or servant of the math, temple or specific endowment who has been dismissed or suspended from his office or is otherwise not entitled to be in possession or by any person claiming or deriving title from such trustee, office-holder or servant other than a person claiming in

good faith to be in possession on his own account or on account of some person not being the said trustee, office-holder or servant, the court shall, on application by the person so appointed, and on the production of the order of appointment, and where the application is for possession of property, of a certificate by the Board in such manner as may be prescribed, setting forth that the property in question belongs to the math, temple or specific endowment concerned, direct delivery to the person appointed as aforesaid of the possession of such math, temple or specific endowment or the records, accounts and properties thereof as the case may be:

Provided that nothing contained in this section shall bar the institution of a suit by any person aggrieved by an order under this section for establishing his title to the said property.

Explanation.—A person claiming under an alienation contrary to the provisions of section 76 shall not be regarded as a person claiming in good faith within the meaning of this section.] (Substituted by Madras Act X of 1946.)

N. B.—New S. 78 was substituted for old S. 78 by Act IV of 1930. The reason for this substitution has been stated as follows:

"The present section 78 does not provide for non-hereditary trustees appointed by the Board seeking the help of courts to recover possession of temple properties. The modification of the section as suggested will remove the desideratum felt in experience.—
(Statement of Objects & Reasons.) [The present section is substituted by Madras Act X of 1946.]

Scope of section.—"It is notorious that trustees dismissed by committees under Act XX of 1863 have in several instances refused to hand over possession to the persons newly appointed and have defied the committees by remaining in possession pending the end of protracted litigation started by them. This clause is intended to end the scandal. Under it, trustees who have been removed or dismissed or have become disqualified to hold office may be dispossessed by summary process of court."

The remedy of a person who has been appointed as the trustee of a temple and who is obstructed in taking up the management or possession of the properties of the temple by the old trustee, is to

⁽¹⁾ See Statement of Objects and Reasons.

apply under S. 78 of the Hindu Religious Endowments Act. An ex parte order under S. 78 without sending notice to the trustee or getting explanation from him is illegal and must be set aside.²

Under S. 84 it is the Endowments Board that has to decide in case of dispute whether a particular temple is public or private and where the Board has in a written statement in a suit filed against it questioning its competency to act, denied the allegation in the plaint that the temple is private, the Board is not, on that account, precluded from exercising the functions of a Tribunal and deciding the question.³

It is within the competence of the Religious Endowments Board to determine whether a math or temple is a public institution, where the Matathipathi or trustee alleges that it is a private endowment or temple not falling within the Act. S. 84 gives the Board power to determine this question subject to the right of the trustee under cl. (2) to apply to the court to modify or set aside the question of the Board.

Where however there is no temple in existence as a place of public worship when the Act came into force the old temple having fallen into ruins or having been demolished S. 84 does not give any power to the Board to call upon the trustees to account for the endowed properties or direct them to rebuild the temple or to apply the income in a particular manner or to invoke the cypres doctrine for the purpose of dealing with the income. 4

Jurisdiction in contentious cases.—The English Charitable Trusts Act. 1860, S. 5, provides that the Board shall not exercise their jurisdiction in any case which by reason of its contentious character, or of any special questions of law or fact which it may involve. or for other reasons, they may consider more fit to be adiudicated upon by any of the judicial Courts. But note that "this section does not deprive the charity Commissioners of jurisdiction over contentious cases. It merely enables them to decline to exercise that jurisdiction where they consider that the case might be better dealt with in a Court of law."

⁽¹⁾ Vulhilinga Mudaliar v. Ramannia Mudaliar, 119 I.C. 166=30 Cr. L.J. 1010=1929 Cr.C. 613=A.I.R. 1929 Mad. 845.

⁽²⁾ Kailasanatha Iyer v. Nallasivam Pillai, 106 I.C. 487=A.I.R. 1928 Mad. 361.

⁽³⁾ Unikanta Menon v. Board of Commissioners for H. R. E., Madras, 28 L.W. 964=55 M.L.J. 679.

⁽⁴⁾ Vyihilinaa Pandara Sannadhi v. T. Sadasiva Iyer, 28 L.W. 535 =A.I.R. 1928 Mad. 1272=55 M.L.J. 605.

⁽⁵⁾ In re Burnham National Schools, (1874) L.R. 17 Eq. 241; Tudor, 3rd ed., p. 565.

A suit to set aside the Board's decision that an endowment is a public temple, if such a suit is maintainable, will be only in the court within whose jurisdiction the temple is situated.¹

Jurisdiction in case of denial of trust or adverse claim by third parties.—Although under the English Charitable Trusts Acts, 1853, the Commissioners are prevented from requiring any information or production of any documents from any person claiming adversely to any charity, they may obtain information from any other quarter if they can; but the mere fact that a party denies a trust for a charity does not oust the jurisdiction of the Commissioners, and they can, in the event of resistance to their examination, proceed by way of proceedings for contempt.²

In referring to this section in the case of In re Sir R. Peel's School³ Sir W. Page Wood says: "A case cannot be considered to be beyond the jurisdiction of the commissioners merely because the person holding the property says, 'I claim to hold the fund adversely to the charity,' when all the facts are before the Court, and upon the state of facts it is plain that no adverse claim has ever really been set up, or, if set up, could be established. In such cases it is the duty of the Court to inquire whether there really is an adverse claim."³

In cases where there are persons claiming adversely to a charity, there is no jurisdiction to enforce the charity as against them on a summary procedure; the way to proceed is by way of regular suit.⁴

Scope of section—Application against strangers in possession—Maintainability—Discretion of Court—(Cases under the old section before the Amendment by Act X of 1946). There is nothing in S. 78 which debars the jurisdiction of the Court to which an application is made under it from trying any question which may be appropriate as between a religious endowment and strangers, provided the question be relevant to the possession of the mutt or temple or its endowments or title-deeds or documents. But the section only confers a discretion. The Court is not bound

⁽¹⁾ Vythilinga Pandara Sannadhi v. T. Sadasiva Iyer, 28 L.W. 535= A.I.R. 1928 Mad. 1272=55 M.L.J. 605.

⁽²⁾ See Chilcott's Edition of the English Charitable Trusts Act (1853),S. 15, p. 18 and notes.

⁽³⁾ In re Sir R. Peel's School at Tamworth, (1868) L.R. 3 Ch. 5⁴² (550)=37 L.J.Ch. 473.

⁽⁴⁾ In re Norwich Town Close Estate, (1888) 40 Ch.D. 298 (310). As to the meaning to be assigned to the term "person claiming adversely," in that English enactment it has been held that a mere defendant is not in that position unless he is counter-claiming, when he would be in the position of a plaintiff. See remarks of Sir G. Jessel in Holme v. Guy, (1877) L.R. 5 Ch.D. 908; Chilcott, p. 87.

to make an order under the section in circumstances in which a difficult question of title may arise and prolonged investigation may be involved. The Court will ordinarily order a separate suit where the dispute is between a temple and a third party who has a genuine and hostile claim. 140 I.C. 826—1933 M. 120. (Note.—The new section says that "the Court shall direct delivery".)

In an application by the trustees of a temple under S. 78 for possession of properties as temple properties from persons who claim to be private owners of the temple as well as of the properties, the Court has clearly jurisdiction to decide the question whether the properties belong to the temple or not. 1943 M.W.N.

322=(1943) 1 M.L.J. 403.

Right to apply—Trustees holding office on the date of the Act.—Trustees holding office when the Act came into force are deemed to have been appointed under it on the date when the Act came into force and so though not appointed by the Committee, they are entitled to apply under S. 78. 140 I.C. 826—1933 M. 120.

Question of Title—Enquiry into—Discretion of District Court—Revision.—S. 78 is intended to apply only to the admitted endowments and it is not intended that the District Court should enter into questions of title. Even if it is expected to form its opinion on such questions in a summary petition under S. 78, it could not be intended to be final; it is subject to the result of a civil suit. If, therefore, the District Court refused to go into the question of title and to pass an order under S. 78, the High Court will not, in revision, send the case back to it. 1933 M.W.N. 934.

Order for Delivery—Enforcement of—Powers of Court.— S. 78 which confers on the Court jurisdiction to make orders for the delivery of possession must be held impliedly to confer on the Court the power of doing all acts necessary to the execution of its order, e.g., to remove obstruction and to cause delivery of possession to be made in accordance with its order. (1913 A.C. 546, Ref.) 38 L.W. 399=1933 M. 689=65 M.L.J. 315. An exparte order under S. 78 without sending notice to the trustee or getting explanation from him is illegal and must be set aside. 106 I.C. 487=1928 M. 361. See also 61 M.L.J. 894. The remedy of a person who has been appointed as the trustee of a temple and who is obstructed in taking up the management or possession of the properties of the temple by the old trustee, is to apply under S. 78 of the Act. 119 I.C. 166=1929 M. 845.

Order under S. 78—Appeal.—No appeal lies from an order under S. 78 either before or after the amendment of that section by

Act IV of 1930. 1933 M.W.N. 141 (1).

Ex parte Order for Delivery—Third Party claiming Property—Objection by—Reconsideration of Order.—Where the Court has passed an ex parte order under S. 78 of the Act, directing delivery of alleged trust property to a person appointed by the Board to discharge the duties of a trustee, it is open to the Court to reconsider the order on the objection of a party prejudicially affected by it. 1931 M.W.N. 1204—61 M.L.J. 894. See also 106 I.C. 487.

Saving of established affect any established usage of a math or temple or the rights, honours, enioluments and perquisites to which any person may by custom or otherwise be entitled in such math or temple.

S: 79 is intended to protect long-established customs and usages in the temple. (Statement of Objects and Reasons)

clause and does not add to or take away existing rights or remedies, The section does not enlarge any rights, honours, emoluments or perquisites, nor does it take away any such which existed before the Aet became law. What was not a right before has not become a right by reason of S. 79. 44 L.W. 539—A.I.R. 1936 Mad. 973—71 M.L.J. 588. See also (1939) 2 M.L.J. 661.

S: 43 of the Act now vests the power of disciplinary control over office-holders and servants in a temple in the trustee of the temple; and therefore a declaration in a decree passed prior to that Act that such right of control over a paricharaka was vested in the holder of archaka office is inconsistent with the statutory provision in S. 43 and must therefore be treated as subrogated and of no effect to that extent. S. 79 does not save such a decree from the operation of the Act. A trustee is therefore entitled to eject a paricharaka from his office notwithstanding that before the Act the right of appointment, dismissal and control were solely declared to be in the archaka. 1939 M.W.N. 1083—A.I.R. 1940 M. 28—(1939) 2 M.L.J. 661.

Settlement of dispute in regard to any of the matters mentioned in section 79.

Settlement of dispute regard to any of the matters mentioned in section 79, such dispute shall be decided by the Board.

(2) The power conferred by this section shall be exercised by a Committee of the Board consisting of not less than two Commissioners of whom the President shall be one.

- (3) The order of the Board shall be final in all cases where the dispute relates to mere ritual or religious observances or honours and shall not be liable to be modified or set aside in a Court of Law. In all other cases, any person affected by the order of the Board may apply to the court within three months from the date of the order to modify or set aside the same but subject to the result of such application, the order of the Board shall be final.] (Inserted by Madras Act X of 1946.)
- 80. Save as provided in this or any other Act, it shall not be lawful for the [Provincial Government] or for any executive officer of the Government not to [Provincial Government] in his official interfere with religious endowments except as provided by this Act. capacity to undertake or assume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any math or temple, to take any part in the management or appropriation of any endowment made for its maintenance, or to nominate or appoint the trustee of -any-religious endowment or to be concerned in any way with any religious endowment.
- N.B.—S. 80 prevents the executive Government from interfering with public religious endowments except in the manner approved by the new law or any other Act for the time being in force. (Statement of Objects and Reasons.)
- Court-fees leviable on documents under this Act.

 Court-fees leviable on documents under this Act.

 Court-Fees Amendment Act, 1922, the proper fees for the documents described in columns (1) and (2) of Schedule II shall be the fees indicated in column (3) thereof.
- (2) The provisions of the Madras Court-Fees Amendment Act, 1922, shall otherwise, so far as may be, apply to the documents mentioned in Schedule II.

1[82. The President of a Board or ²[an Assistant Commissioner] may grant copies of proceedings or other records of his office on pay-

Grant of copies of proceedings, etc. ings or other records of his office on payment of such fees and subject to such conditions as may be determined by the Board.

Copies shall be certified by the President of the Board or ²[Assistant Commissioner] or by such officer as may be authorized in this behalf by the President of such Board or ²[Assistant Commissioner] in the manner provided in section 76 of the Indian Evidence Act, 1872.]

N.B.—This section has been recast in the new form by Madras Act IV of 1930. The reason for this amendment has been stated as follows: Presidents of the Board and committees must have the power to authorize their officers to certify copies furnished under section 82 of the Act and an amendment is proposed for that purpose.

Copying charges.—"The Board has fixed the charges for the grant of copies of proceedings or records of the Board or the committees at annas four for every 100 words or fraction thereof whether in English or in the vernacular. Copies of proceedings and records of the Board are being supplied to the parties on receipt of regular applications with necessary court-fee stamps affixed and copying charges calculated on the above basis. (Report of the Religious Endowment Board.)

Transitory provisions to govern existing committees.

83. (1) Every committee established under the Religious Endowments Act, 1863, which is in existence at the commencement of this Act shall be deemed to have been duly constituted under the provisions of this Act.

(2) In their application to the members and presidents of committee in office at the commencement of this Act and the first reconstitution of such committees in accordance with this Act, the provisions of this Act shall be read subject to the rules contained in Schedule III.] (Omitted by Madras Act V of 1944.)

⁽¹⁾ Recast by S. 11, Madras Act IV of 1930.

⁽²⁾ Substituted by Madras Act V of 1944.

Settlement of dispute as to whether an institution is a math or temple, etc.

- [84. (1) If any dispute arises as to— (a) whether an institution is a math or temple as defined in this Act.1
- (b) whether a trustee is a hereditary trustee as defined in this Act or not, or
- (c) whether any property or money endowed is a specific. endowment as defined in this Act or not, such dispute shall be decided by the Board and no court in the exercise of its original jurisdiction shall take cognizance of any such dispute.

(1) N.B.—New S. 84 was substituted for old S. 84 by Madras Act IV of 1930. The reason for this amendment has been stated as follows: "Doubts have been raised as to whether disputes as to private character of temples can be dealt with by the Board under section 84 as it is. The proposed amendment is intended to make the meaning and the object of the legislature clear; such doubts have been based on the existence of the definition of 'temple' and 'math' as meaning a public temple and a public math."—(Statement of objects and Reasons.) That has been superseded by the present section substituted by Madras Act X of 1946.

A CRITICISM.—Jurisdiction of the Board to enquire into questions as to whether a particular endowment is one to which the Act applies or not.— "It is an elementary principle of law that when a Court or body is invested with a limited jurisdiction that Court or body ought not to be made the sole judge on the question as to whether the subject-matter is within its jurisdiction or not. And yet, S. 84 makes the Board the sole judge, subject only to the order of the Board being revised by an application to the Court. It is somewhat strange that while the Act contains elaborate provisions safeguarding the right of suit, by a trustee, or an aggrieved party, on even sundry matters, the only remedy of an aggrieved party under S. 84 which deals with the question of jurisdiction is a remedy by application. If there is any case in which the remedy by suit has to be safeguarded, it is in this case. The provision practically enables the Board to clutch at jurisdiction." (See 51 M.L.J.—Journal portion, p. 44).

Regarding the work done under this by the Board during the first year of its existence, the Commissioners state:—

"A good deal of work was done by the Board dealing with the following classes of disputes raised under section 84 of the Act:-

 (i) Whether a religious institution is a math as defined in the Act,
 (ii) Whether a temple is a public one to which the Act should apply, (iii) Whether the income of an institution falls below the minimum laid down in section 2 of the Act entitling it to be exempted from the

operation of the Act, or

(iv) Whether a temple is an excepted temple or a non-excepted temple. The claim that temples are private is most common in the Malabar District though a few cases have come up from other districts also. The work of the Board in the Malabar District has been of an unique character. It is well known that, when under Act XX of 1863 the powers vested in the Board of Revenue in regard to religious institutions were transferred to committees constituted under the Act, the whole district of Malabar was left out

- Any person affected by a decision under sub-section
 may, within six months, apply to the court to modify or set aside such decision.
- (3) From every order of a District Judge, on an application under sub-section (2), an appeal shall lie to the High Court within three months from the date of the order.
- (4) Subject to the result of an application under subsection (2) or of an appeal under sub-section (3), the decision of the Board shall be final.] (Substituted by Madras Act X of 1946.)

Jurisdiction of the Board —Under S. 84 it is the Endowments Board that has to decide in case of dispute whether a particular temple is public or private and where the Board has in a written statement in a suit field against it questioning its competency to act, denied the allegation in the plaint that the temple is private, the Board is not, on that account precluded from exercising the functions of a Tribunal and deciding the question. 24 L.W. 964 = 55 M.L.J. 679=1929 Mad. 85.

It is within the competence of the Religious Endowment Board to determine whether a math or temple is a public institution, where the Matathipathi or trustee alleges that it is a private endowment or temple not falling within the Act. S. 84 gives the Board

of the scheme of such committees and the trustees of religious institutions were left to manage without any supervision or control. Both as a result of this special treatment and some judicial decisions of the lower Court which attempted to draw a distinction between temples in Malabar and temples in the rest of the Presidency (which distinction cannot be maintained in view of the definition of "temple" introduced in this Act and Act I of 1925) the trustees of these temples were encouraged to take up a defiant attitude and claim the temples as their private property. Further, the tarwad system has such a demoralizing effect on the trustees who are karnavans of their families. and who, therefore, try to make, during the period of their management as much gain as possible from their family properties and the trust Devasthanam properties and accordingly do not show any surplus or saving but on the other hand, borrow in many cases on the security of the Devaswom properties for alleged Devaswom purposes. It has been found in most of the cases that the contentions as to the private nature of the institution were unsustainable, and that many of the temples claimed as private amply satisfy the definition of "temple" in section 5 of the Act and the criteria for determining the public nature of temples laid down by their Lordships of the Privy Council in Lakshmana Goundan v. Subramania Iyer, 1924 M.W.N. 278. Some trustees have contended that the Board has no jurisdiction to entertain a dispute of the kind raised by them, and have moved the Madras High Court for the issue of writs of injunction against the Board. None of the applications filed in the High Court have yet been heard on their merits." (First Rep. of the Rel End. Board.)

power to determine this question subject to the right of the trustee under cl. (2) to apply to the Court to modify or set aside the decision of the Board. Where, however, there is no temple in existence as a place of public worship when the Act came into force the old temple having fallen into ruins or having been demolished, S. 84 does not give any power to the Board to call upon the trustees to account for the endowed properties or direct them to rebuild the temple or to apply the income in a particular manner or to invoke the doctrine of cypres for the purpose of dealing with the income. A suit for setting aside the Board's decision that an endowment is a public temple if such a suit is maintainable will lie only in the Court within whose jurisdiction the temple is situated. 28 L.W. 535=1928 Mad. 1272=55 M.L.J. 605.

S. 84 only applies to disputes as to whether an institution is a temple or math or whether a temple is an excepted temple. Where the dispute is whether a charity constituted a specific endowment of a temple, the section does not apply. The fact that the trustees of a charity wrongly proceeded under S. 84 (2) does not take away their right to have the question in dispute decided in other proceedings—for example a regular suit contesting the decision of the Board levying an annual contribution under S. 69 of the Act. Nither the decision of the Board nor that of the District Judge affirming it under S. 84 will operate as res judicata. 58 L.W. 240—1945 M.W.N. 317—1945 Mad. 273—(1945) 1 M.L.J. 427. [See now Sec. 84 (1) (c).]

Jurisdiction of Board—Need for temple being public place of worship.—See 55 M. 636—137 I C. 758—62 M.L.J. 594.

S. 84 (2): Bar of suit under S. 82 (2).—When by an act of the legislature powers are given to any person for a public purpose from which an individual may receive injury, if the mode of redressing the injury is pointed out by the statute, the jurisdiction of the ordinary Courts is ousted, and, in the case of injury, the party cannot proceed by suit. S. 84 (2) provides an application to the District Court as the remedy for a person aggrieved by the decision of the Religious Endowments Board under S. 84 (1) and therefore debars him from proceeding by a separate suit. (12 M. 105; 31 B. 604; 36 M. 120, Rel.) 54 M. 928=34 L.W. 209=133 I.C. 8=A.I.R. 1931 M. 574=61 M.L.J. 117. See also 1935 Mad. 564.

Where a certain temple has been declared by the Board to fall within the definition under S. 9 (12), a suit for declaration that the order of the Board is ultra vires does not lie. The remedy is not open to a party to seek redress in a matter of this sort by way of suit, since the remedy provided in the Act is by way of

application under S. 84 (2). (54 M. 928=61 M.L.J. 117, Foll; 51 M. 76; 53 M.L.J. 688, Dist.) 158 I.C. 335=1935 M.W.N. 1088=42 L.W. 207=1935 Mad. 564.

Finality of decision of the Board. -The finality of decision by the Hindu Religious Endowments Board under S. 84 has relation only to the definition then obtaining and not to a later legislative variation of the definition. Where the Board gives a decision in 1927, holding that a particular temple is an excepted temple as defined by the Act as then in force, that does not preclude the Board from re-opening the question and from subsequently holding the same temple to be not an "excepted temple" after the coming into force of the Amending Act IV of 1930 in view of the altered of the expression. There is really no question of definition interference with any vested rights or of impairing obligations which have come into existence under a previous state of the law, There is therefore no scope for the application in such a case. of the rule against retrospective operation. I.L.R. (1937) Mad. 504-45 L.W. 57-A.I.R. 1937 Mad. 232-(1937) 1 M.L.J. 105 (F.B.). See also 1934 Mad. 555.

Practice and Procedure. -It is true that proceedings before the District Court under S. 84 have been held not to be merely in the nature of an appeal so as to preclude the parties from leading fresh evidence before the Court; but that is very different from saying that the proceedings before the Court are so wholly de novo that the materials placed before the Board should not be regarded as part of the record of the enquiry. The fact that the evidence before the Board consisted only of affidavits of persons whom the Board did not choose to examine before the Court may be a very important circumstance to be borne in mind by the District Court, in appraising the value of such evidence; but it is too much to say that the materials that were before the Board should be treated as not forming part of the record of the enquiry before the Court. 46 L.W. 388=1937 M.W.N. 1145=A.I.R. 1937 Mad. 973= (1937) 2 M.L.J. 485. Where an application made to a District Court under S. 84 is dismissed for default, the aggrieved party can maintain an application to set aside the dismissal for default and to restore the original application. The fact that the Endowments Act is in a sense self-contained does not preclude the applicability of the provisions of the C.P. Code, in so far as suits and applications in Court are concerned. I.L.R. (1938) Mad. 216 =45 L.W. 695=A.I.R. 1937 Mad. 653=(1937) 2 M.L.J. 175.

Right of parties to adduce evidence.—An application under S. 84 (2) is not merely in the nature of an appeal or revision; it is an application which, so far as the Court is concerned, governed by the ordinary procedure of the Court, and on which the

parties have the right to produce such evidence as they wish. The fact that the petition did not adduce evidence before the Board does not deprive him of the right to adduce evidence before the Court. 40 L.W. 680. When an application is made to a District Court under S. 84 (2) in respect of a decision arrived at by the Board on the question whether an institution is a math or temple within the meaning of the Act, the jurisdiction of the Court is not restricted to that an appellate or revisional tribunal and application being one to which the ordinary procedure of the Court will apply, the parties have the right to produce such evidence as they wish. 139 I.C. 418=36 L.W. 673=A.I.R. 1932 M. 593=63 M.L.J. 254.

Proper parties to application.—Where certain persons came forward and were made parties to the petition under S. 84 they are proper, though perhaps not necessary parties to an application before the District Judge under S. 84 (2). 47 L.W. 738—A.I.R. 1938 Mad. 384—(1938) 1 M.L.J. 685. By the amendment of 1930, the right to apply under S. 84 (2) is given to any person affected by the decision under S. 84 (1). In the case of a communal temple managed by the village community, any member of the community has a locus standi to apply to set aside an order of the Board holding the temple to be an excepted temple. 175 I.C. 507—10 R.M. 788—1937 M.W.N. 1117—46 L.W. 528—A.I.R. 1937 Mad. 940. See also 1938 Mad. 321.

Powers of District Court—Remand.—The District Court has no power under S. 84 (2) to direct a remand and rehearing of the case. It has only the power to modify or set aside the decision of the Board or dismiss the application but more than that it has not got all the powers of an appellate Court. 34 L.W. 848—1931 M.W.N. 764—61 M.L.J. 862.

Appeal.—An order passed by the District Judge under S. 84 (2) on an application made to the District Court to set aside the decision of the Hindu Religious Endowments Board under S. 84 is not appealable to the High Court either under the Endowments Act or the Civil Procedure Code. A proceeding commenced on such an application is not a suit, and an order made thereon is not a decree and is not appealable. 1933 M.W. N. 1385 (F.B.). See 68 M.L.J. 423—A.I.R. 1935 M. 373. See also 42 L.W. 207—1935 M.W.N. 1088—1935 Mad. 564.

There is no right of appeal against an order of the Court under S. 84 (2); but the order is open to revision by the High Court. I.L.R. (1941) Mad. 559=53 L.W. 170=A.I.R. 1941 Mad. 510=(1941) 1 M.L.J. 250.

Application under the section—Dismissal for default—Order refusing to set aside—Appeal.—An order refusing to set aside the dismissal of an application under S. 84 for default is not appealable. 57 M. 297—148 I.C. 168 (1)—39 L.W. 197—A.I.R. 1934 M. 258 (1)—66 M.L.J. 247.

Board deciding status of temple—Power to re-open.—Where the question of the status of the temple is raised by the trustees for the purpose of getting the decision of the Board, there is a dispute which the Board is competent to decide under S. 84 (1) and if the Board decides that the temple was an excepted temple according to the law then prevailing and the trustee being satisfied with his decision no application is made to the Court to set aside or modify the Board's order, the order of the Board becomes final. The Board then has no jurisdiction to reverse its order after the amendment of the definition of excepted temple of 1930. 152 I.C. 386—40 L.W. 288—A.I.R. 1934 M. 555.

Court-Fees.—Art. 17, Court-Fees Act, stands by itself, Arts. 17-A and 17-B are separate Articles and cannot be read together for the purpose of determining the Court-fee. And hence the Court-fee payable on an application under S. 84, sub-S. (2), Religious Endowments Act, to modify or set aside the decision under S. 84 (1) is the Court-fee leviable under Art. 17 (1), that is, Rs. 15. A.I.R. 1930 M. 392—58 M.L.J. 494—31 L.W. 428—53 M. 266—1930 M.W.N. 404 (A.I.R. 1929 M. 334, Appr.; 113 I.C. 88—A.I.R. 1929 M. 52, overruled). See also 56 M.L.J. 113; 29 L.W. 298—1929 Mad. 334—56 M.L.J. 363.

Penalty for refusal by trustee, etc. to comply with certain provisions of the Act.

- [85. (1) If any trustee, executive officer or other person in whom the administration of a math, temple or specific endowment is vested—
- (a) wilfully refuses, neglects or fails to comply with the provisions of section 38, section 39 or section 39-A, or
- (b) wilfully refuses, neglects or fails to furnish such accounts, returns, reports or other information relating to the administration or management of the math, temple or specific endowment or its funds, property or income or the application thereof, at such time and in such manner as the Board or Assistant Commissioner may require, or
- (c) wilfully refuses or causes obstruction to the inspection by the President or Commissioner of the Board or by an Assistant Commissioner, of the movable and immovable pro-

perty belonging to, and all records, correspondence, plans, accounts and other documents relating to, the math, temple or specific endowment or fails to produce them for inspection, he shall, unless he shows reasonable cause to the satisfaction of the Provincial Government, be liable to pay to the Board such penalty not exceeding one hundred rupees as may be determined by the Provincial Government.

- (2) The order of the Provincial Government imposing a penalty under sub-section (1) shall be final and shall not be liable to be modified or cancelled in a Court of Law.
- (3) The penalty shall be paid within the time fixed by the Provincial Government by the person against whom the order is made, from his own funds and not from the funds of the math, temple or specific endowment concerned.
- (4) If the penalty is not paid within the time fixed or within such further time as may be granted by the Provincial Government, the Collector of the district in which any property of the person against whom an order has been made is situated shall, on a requisition made to him by the President of the Board, recover the amount, as if it were an arrear of land revenue and pay the same to the Board.
- (5) No suit, prosecution or other legal proceeding shall be entertained in any Court against the Crown or any servant of the Crown for anything in good faith done or intended to be done in pursuance of this section.] (Added by Madras Act X of 1946.)

SCHEDULE I.

(Omitted by Madras Act V of 1944.)

SCHEDULE II.

(See section 81.) Description of the document. Proper fee. Section. I.—Suits. (3) (1) RS. Suit to modify or set aside an order of the 50 . 55 (4) Assistant Commissioner fixing the dittam. Suit to modify or set aside a scheme settled FQ 57 (7) by the Board for a temple or specific endowment attached thereto.

Section.	Description of the document.	Proper Fee.
		RS.
63 (7)	Suit to modify or set aside a scheme settled by the Board or a math or specific endow- ment attached thereto.	50
67 (4)	Suit to modify or set aside order of the Board directing diversion of surplus funds.	50
73 (1)	Suit for appointment or removal or trustee of math, temple or specific endowment, for accounts, vesting properties, etc.	50
	II.—Applications to Court.	
44	Application by trustee for recovery of the amount from the person in possession or by the person in possession from the person responsible in law.	The fee leviable on a plaint for the amount claimed under the Madras Court-Fees (Amendment) Act, 1922.
53-A (4)	Application by a hereditary trustee against an order of the Board suspending, remov- ing or dismissing him.	25
57 (9)	Application to modify or cancel a scheme for a temple or specific endowment attached thereto.	25
65	Application to modify or cancel a scheme for a math or specific endowment attached thereto.	25
67 (5)	Application to modify or cancel court's deci- sion in a suit under section 67 (4).	25
76 (2)	Application by a trustee or person having interest for modifying or cancelling an order sanctioning an exchange, sale, mortgage or lease for a term exceeding five years.	15
77 (2)	Application to modify or set aside an order allocating any endowment, property or income therefrom to religious and secular purposes.	20
78	Application for delivery of possession.	2
79-A (3)	Application to modify or set aside an order of the Board under section 79 other than an order as to ritual or religious obser- vances or honours.	25
84 (2)	Application to modify or set aside the Board's decision under sub-section (1).	15
	III.—Appeal to High Court.	
84 (3)	Appeal against an order of the District Judge under sub-section (2).	15 .
IV A	theels to the Burning in I Community Board and Assistant	

IV .- Appeals to the Provincial Government, Board and Assistant Commissioner.

43 (2) Appeal by any office-holder or servant to the Assistant Commissioner against an order of punishment passed by a trustee.

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Se

ction.	Description of the document. (2)	Proper fee. (3) Rs.
43	(3) Further appeal to the Board by a hereditary office-holder or servant against an order of the Assistant Commissioner on appeal under sub-section (2).	Rs. 2
48		20
53		25
55		
56		10
	V.—Applications to Board.	
57	Application for settlement of a scheme for a temple or specific endowment attached thereto.	50
62	Application by not less than 20 persons for settlement of a scheme for a math or specific endowment attached thereto.] (Schedule II substituted by Madras Act X of 1946.)	50

SCHEDULE III.

(Omitted by Madras Act V of 1944.)

APPENDIX I.

Statement of Objects and Reasons to Act II of 1927.

Doubts have been expressed as to the validity of the Madras Hindu Religious Endowments Act, 1925, and of the action taken and things done in pursuance of and under that Act, and legal proceedings have been instituted in the Madras High Court and certain subordinate courts questioning its validity. The result has been that the working of the Act has been considerably obstructed by persons whose supposed vested interests have been affected by the Act. This Bill is primarily intended to remove all doubts that may exist as to the validity of the said Act and of the action taken and things done thereunder.

APPENDIX II.

Statement of Objects and Reasons (to the original Bill of 1922).

There is wide-spread dissatisfaction with the management and control of religious institutions falling under sections 3 and 4 of the

Government of India Act (XX of 1863). In this Presidency opinion is unanimous that the inadequacy of the provisions of that Act to check the maladministration and misuse of the trust properties is largely responsible for the present condition of these institutions. Various efforts have been made from time to time to introduce legislative measures for the removal of the many abuses that admittedly exist in the administration of these endowments. In 1874, 1876, 1884, 1888, and again in 1894, committees were appointed to report upon the state of the existing law and to make suggestions for its modification. Several private Bills on the subject were also introduced both in the local and in the supreme Legislative Councils. The recommendations of the above committees and the Bills above referred to however fell through as they were considered either too wide in their application or were too elaborate in their provisions or were inconsistent in certain respects with the principle and policy on which the Act of 1863 was based.

- 2. The principal defects in the working of the Act of 1863 are—
- (1) there is no provision in it for the exercise of supervision over the large and important class of endowments referred to in section 4 of the Act;
- (2) the system of suit by parties interested is costly and has proved inadequate to guard against dishonesty on the part of trustees and members of committees;
- (3) the powers and functions of committees are not defined with sufficient precision;
- (4) there is no provision enabling committees to raise funds for the purpose of carrying out their duties;
- (5) committees cannot enforce their orders save by regular suit to compel obedience;
- (6) members of committees hold office for life and cannot be ousted save by regular suit;
- (7) the provisions contained in the Act for the due and regular performance of the duty entrusted to committees of preparing the registers of voters and conducting elections of committee members were utterly inadequate; and
- (8) there are no provisions in the Act requiring periodical audit of accounts kept by trustees.

The amendments required in the Act of 1863 to remedy these and other defects are so many that it has been considered the preferable course to repeal it altogether and enact a self-contained piece of legislation dealing with the whole subject of Hindu religious endowments in this Presidency.

The main object of the present Bill is to ensure the efficient administration of Hindu religious endowments in this Presidency, and if the principle of strict religious neutrality of the Executive Government embodied in the Act of 1863 has been departed from in some of the provisions of the present Bill, it has been done merely to secure this end. The change in the character of the Executive Government and the fact that religious endowments are a transferred subject in charge of a Minister responsible to the legislature justify this departure. The Bill aims at efficient control over all classes of Hindu public religious endowments, though certain special privileges have had to be accorded to endowments falling under section 4 of the Act of 1863, especially in the matter of succession, liability to inspection, removal from office, etc. has to be remembered that such endowments have since 1863 been left practically to themselves. Proprietors of ancient zamindaris are trustees of some of them. Others have, as trustees members of the Nagarathar community, who are generally regarded in this Presidency as not merely liberal endowers of temples but efficient administrators of the endowments in their charge. Mutts have also been deliberately included within the scope of the Bill as they are endowed with large properties dedicated for public purposes and as complaints of mismanagement have in the case of several of them been pronounced. The Bill provides for regularly constituted committees to supervise and control the management of the religious endowments. The members of such committees will be partly elected and partly nominated. The term of their office has been limited to five years, as the life membership provided by section 9 of the Act of 1863 is, as already stated, acknowledged on all hands as one of the serious defects of that Act. Provision has been made for the maintenance by committees of proper registers of. the endowments over which they exercise supervision and also for the preparation and maintenance of a record of the origin and history of the endowments committed to their care. Presidents of committees are also to be definitely invested with the power of inspecting the movable and immovable property belonging to and all records, etc., connected with the management of, religious endowments and specific provision has been made for the levy of contributions from such endowments for meeting the expenses of the The Bill also gives committees power to settle dittams, and Government will have power to make rules enabling committees to control establishments and intervene in the internal administration of temples. Care has been taken to provide that the decisions of the committee, the Government, the Collector, or the Court should be final in respect of several matters and this will, it is hoped, effectively put an end to the costly pastime-which has in recent years prevailed—of people engaging light-heartedly

or for factious or sectarian reasons in litigation relating to religious endowments. In cases where a temple or other religious endowment attracts large crowds and local authorities have to make special sanitary and other arrangements, the payment by trustees to such local authorities of contributions from the funds of endowments has been made obligatory. This is in consonance with the provisions of the Madras District Municipalities Act and the Madras Local Boards Act. Specific provision has also been made for the diversion of the surplus funds of religious endowments for purposes of public utility other than those for which they were originally intended. The power to order such diversions is vested in the Courts and the principles to be observed in ordering such diversion are those which courts ordinarily follow in applying the "cypres" doctrine. During recent years a considerable number of schemes have been settled by courts for the administration of specific religious endowments, many of which have proved unsatisfactory and it is felt in many quarters that administration under some of those schemes is even worse than administration under the Act of 1863. These schemes are, however, of varying complexity and have settled many matters which do not pertain to mere administration and some of which do not fall within the purview of the Act of 1863 or of this Bill. The Bill therefore contains only an enabling provision in this respect. An application may be made to a court by a committee or a person, whose rights as trustee have affected, for the abrogation or modification of a scheme and for a declaration that the new legislation will apply to the endowments in question. The Bill exempts from its scope minor village religious institutions except in such matters as the maintenance of proper accounts. Long-established customs and usages in temples are sufficiently safeguarded and it is proposed to prevent the Executive Government from interfering with Hindu public religious endowments except in the manner approved by this law. For the rest the notes on clauses sufficiently explained the provisions of the Bill.

Notes on clauses of the Original Bill of 1922.

Preamble and Clause 1.—Act XX of 1863 is so badly framed and the amendments required therein are so many that it has been considered the preferable course to repeal it altogether and enact a self-contained piece of legislation dealing with the whole subject of Hindu religious endowments in this Presidency.

Clause 2, sub-clause (1).—The new law will apply to all Hindu religious endowments in the Presidency excluding the Presidency town.

Sub-clause (2).—There are Jain mutts and shrines in this Presidency to which endowments of considerable value are attach-

ed. As the Jains in these matters do not materially differ from the Hindus it is proposed to take power to extend the Act by notification to such endowments.

Clause 3 requires no explanation.

Clause 4, sub-clause (1) requires no explanation.

Sub-clause (2).—The definition of "court" follows to some extent that in section 2 of the Religious and Charitable Trusts Act, XIV of 1920.

Sub-clauses (3) to (6).—These are intended to make substantially the same distinction as that which existed under the Act of 1863 between endowments falling under section 3 and those falling under sections 4 of that Act. Broadly speaking the endowments falling under section 3 of that Act would be non-hereditary and those falling under section 4 hereditary.

Though the Bill aims at efficient control over the administration of all classes of Hindu religious endowments certain special privileges have had to be accorded to endowments falling under section 4 of the Act of 1863, especially in the matter of succession, liability to inspection, removal from office; etc. It has to be remembered that such endowments have since 1863 been left practically to themselves and several of them have, as trustees, proprietors of impartible estates and of members of the Nagarathar community who are generally regarded in this Presidency as not merely liberal endowers of temples but efficient administrators of the endowments in their charge.

Sub-clause (7) requires no explanation.

Sub-clause (8) —The definition of the term "religious endowment" is comprehensive. Mutts have been deliberately included. They are endowed with large properties and complaints of mismanagement have in their case been very pronounced. The definition will also include kattalais which are endowments created by private individuals for the performance of any service or charity connected with a public temple. The definition covers not merely the propeeties that are endowed for a temple or mutt, but the temple and mutt themselves.

Sub-clause (9).—The term "trustee" has been so defined as to include a manager or superintendent referred to in sections 3 and 4 of the Act of 1863. The definition will include a matadhipathi to the extent that he is a trustee for the secular administration of the mutt and temples in his charge. It also covers the cases of gutrdians of minors and of persons who get into possession of trust properties without due authority for the time being.

Clause 5.—Section 7 of the Act of 1863 empowers the Government once for all to appoint committees in any division or district to take the place and exercise the powers of the Board of Revenue. It has been held that when once a committee has been appointed for a division or a district and the religious endowments there have been handed over to the committee, the Government cannot afterwards, on readjusting the boundaries of the divisions or districts, take any of the endowments away from the committee in charge of them and hand them over to a new committee. The proposed clause remedies this and other defects connected with this question. vests the Local Government with the power of constituting committees for any local area or for any religious endowment or any class of religious endowments in such local area or of varying their constitution or of abolishing them. In constituting committees the Government will, however, keep in view the principle that committees should be on a territorial basis, the unit being ordinarily a district. (Vide S. 20.)

Clause 6.—The Act of 1863 prescribes a minimum of three members for a committee and fixes no maximum. A minimum of six and a maximum of twelve are prescribed in this clause. As the election will be on a fairly broad franchise, it is not unlikely that important minorities will be left unrepresented. Provision is therefore made for a nominated element not exceeding one-third of the sanctioned strength. The power of appointment is vested in the Local Government instead of in the Court as in Act XX of 1863. (Vide S. 21.)

Clause 7 provides for the appointment by the Local Government of all the members of committees newly constituted. This is necessary as when committees are constituted for the first time elections could not be held for want of electoral rolls, etc. (Vide S. 22.)

Clause 8 provides for the division of the area over which a committee has jurisdiction into circles for electoral purposes. And the approval of the Local Government has been prescribed for this division with the object of securing some correlation between circles created for the purposes of this Act and circles created for the purposes of election under other Acts such as the Madras Local Boards Act. This will make the task of the preparation and publication of rolls easier than if each committee were left uncontrolled to determine its own circles. (Vide S. 23.)

Clauses 9, 10 and 11 relating to the preparation of electoral rolls and qualifications and disqualifications of electors and candidates are largely based on similar provisions in other Acts, such as the District Municipalities Act, 1920 and Local

Boards Act, 1920. It will be noticed that no non-Hindu can vote or be a candidate for a seat on the committee. (Vide Ss. 24 to 26.)

Clause 12 limits the term of office of members of committees to five years. The life membership provided by section 9 of the Act of 1863 is acknowledged on all hands to be among the most serious defects of that Act. (Vide Ss. 27 to 29.)

Clause 13 definitely provides that the President of a committee shall be elected and hold office only for one year. (Vide S 28.)

Clause 14 provides for the filling up by nomination by Government of vacancies in the office of members or Presidents not filled up by election within a definite period after the occurrence of the vacancies. (Vide S. 30.)

Clause 15 is intended to get over decisions such as the one in 20, Madras Law Journal, page 814, vis., that where the number of members of a committee is reduced to two in consequence of vacancies the remaining members are not competent to act as a committee and any acts done by them as a committee are invalid. (Vide S. 31.)

Clause 16 incorporates every committee with a view to give it the right to sue and be sued and to acquire, hold and transfer property. (Vide S. 32.)

Clauses 17 and 18 require no explanation. The language followed in these two clauses is that of the Madras Local Boards Act, 1920, and the Madras District Municipalities Act, 1920. (Vide Ss. 33 and 34.)

Clause 19.—Sub-clause (1) describes the functions of a committee in general terms. It takes the place in fact of the first sub-paragraph of section 7 of the Act of 1863.

Sub-clause (2) is of some importance. Several committees do not maintain a proper register of the endowments over which they exercise jurisdiction and some of them are ignorant as to the properties comprising such endowments. It is also necessary that committees should be compelled to take interest in preparing and maintaining a record of the origin and history of the endowments committed to their care. Apart from the utility of such a record and register in facilitating the administrative work of committees and trustees, these endowments contain a lot of history which is worth the while of the committees to unearth and, if need be, to publish in accessible form.

Clause 20.—Sub-clause (1) confers power on a committee to make temporary appointments of trustees in cases where there is a dispute as to succession and pending the decision of such disputes

by a competent authority. It has to be noted that under section 5 of the Act of 1863 the power to make such temporary appointments was vested in the court and could be exercised only on the application of a person interested in the religious institution. The proposed sub-clause empowers the committee to make such appointments whether an application is made or not.

Sub-clause (2) is calculated to enable the temporary trustee to obtain in cases of difficulty possession of trust properties by summary process of court.

Clause 21.—Sub-clause (1) empowers the committee to fix the number of non-hereditary trustees for any religious endowment subject to a maximum of three.

Sub-clause (2) empowers the committee to appoint non-hereditary trustees of religious endowments and limits their term of office to five years.

Sub-clause (3) empowers committees to fix and vary salaries of non-hereditary trustees subject to such rules as the Local Government may prescribe.

Sub-clause (4) is necessary as the old Act of 1863 is to be repealed altogether and as provision has to be made for the continuance in office of such non-hereditary trustees of religious endowments as are in existence at the commencement of this Act. (Vide S. 51.)

Clause 22.—Sub-clause (1) gives the power of removal or dismissal of non-hereditary trustees to the Committee. Hereditary trustees can be removed only by regular suit and this has been provided for in clause 37 of the Bill.

Sub-clause (2) requires no explanation.

Sub-clause (3) provides for appeal to the Government from the orders of the committee under sub-clause (1). (Vide S. 53.)

Clause 23.—A trustee discharges very onerous functions and it is necessary that he should not be permitted to continue in office when he becomes subject to the disqualifications which would be sufficient to terminate membership on a committee, for example. (Vide S. 54, cl. 2.)

Clause 24.—It is notorious that trustees dismissed by committees under Act XX of 1863 have in several instances refused to hand over possession to the persons newly appointed and have defied the committees by remaining in possession pending the end of protracted litigation started by them. This clause is intended to end this scandal. Under it, trustees who have been removed or dismissed or have become disqualified to hold office may be dispossessed by summary process of court. (Vide S. 78.)

Clause 25 repeats the first portion of section 13 of the Act of 1863.

Clause 26 embodies in an elaborated form the substance of the second sub-paragraph of section 13 of the old Act but throws the obligation on the trustee. (Vide S. 59.)

Clause 27 provides for the regular audit of trustees' accounts by a certified auditor. Compulsory audit is provided by statute in the case only of endowments with an income of not less than Rs. 3,000 per annum. In other cases, the committee is given discretion to direct regular audit. (Vide S. 45.)

Clauses 25-27 apply to both hereditary and non-hereditary endowments.

Clause 28 provides for the right of inspection—a right which several trustees have questioned in the past. (Vide S. 60.)

Clause 29 provides for the variation, without the intervention of a Court, of standards of expenditure in temple, or other institution "dittams" as they are called. The Court can intervene only if there is a difference of opinion between the trustee and the committee in this matter. (Vide S. 54, cl. 4.)

Clause 30 regularises the levy of contributions from endowments for meeting the expenses of the committee subject to a maximum of three per cent. of the gross income. (Vide S. 69.)

Sub-clause (3) imposes on every trustee the obligation of paying such a contribution, and in default of his doing so the amount is made recoverable by a process of the civil court.

Clause 31 reproduces in substance the last clause of section 13 of the Act of 1863. Provision has been made therein for audit of the committee's accounts and for their publication in the prescribed manner.

Clause 32 renders it obligatory on the part of trustees of religious endowments connected with mutts, temples, etc., attracting a large number of pilgrims or worshippers from outside to pay contributions to the funds of the local authorities for making the necessary sanitary and other arrangements in the localities concerned on the occasions of any fairs or festivals. This is in consonance with the provisions of section 156 of the Madras District Municipalities Act, 1920 and S. 128 of the Madras Local Boards Act 1920.

Clause 33 provides for the diversion of the surplus funds, if any, of religious endowments for other purposes such as education, medical relief, etc. The power to order such diversion is vested in the courts and the principles to be observed in ordering such diver-

sions are those which courts ordinarily follow in applying the cypres doctrine. (Vide S. 67.)

Clause 34 enumerates the rule-making powers of the Local Government. (Vide S. 71.)

Clause 35.—There will be two schedules to the new law, one dealing with electoral qualifications and the other making provision for the transition from the old committees to the new ones. These schedules are made alterable with the approval, by means of a resolution, of the Legislative Council—a procedure which follows the one prescribed in the Local Boards Act, section 201. (Vide S. 72.)

Clause 36 provides for the making of regulations by committees for facilitating the carrying out of their duties under the Act (Vide S. 36.)

Clause 37 relates to suits. The avoidance of unnecessary litigation has been kept in view in drafting this clause. Advocate-General may, by virtue of his office and the rights attached thereto [see also section 114 (2) of the Government of India Act] file a suit. Any person having an interest may also sue but only with the leave of the Collector. The reliefs claimable in such a suit have also been largely restricted. Removal of nonhereditary trustees in charge of endowments having been separately provided for under clause 22, suits under clause 37 may lie only for removal of committee members or hereditary trustees or trustees of endowments not subject to the jurisdiction of a committee. Bill gives powers to settle dittams and rules may be made by Government under clause 34 empowering committees to control establishments and intervene in the internal administration of temples. In respect of such endowments as are within the jurisdiction of committees there will be no need hereafter for framing schemes of management. Suits for settlement of schemes under Clause 37 will therefore be limited to endowments not subject to the juris-The limited range of reliefs claimable diction of committees. under clause 37 (1) taken in conjunction with the barring [subclause (5) 7 of suits under sections 92 and 93 and rule 8 of order 1 of the first Schedule of the Civil Procedure Code and with the other provisions in the Bill making the decisions of the committees or the court or the Government final in respect of several matters will, it is hoped, effectively put an end to unnecessary litigation. The same reason explains sub-clause (3) which prohibits any appeal from the Collector's order under sub-clause (2).

Clause 38 mainly reproduces section 15 of the Act of 1863 and is intended to supersede the decision of the majority of the Full Bench in I.L.R. 42 Mad., p. 360, and is in accordance with the

views expressed in that case by Kumaraswami Sastri, J. and Abdur Rahim, J.

Clause 39.—During recent years a considerable number of schemes have been settled by courts for the administration of specific religious endowments. Many of these schemes have proved unsatisfactory and it is felt in many quarters that administration under such schemes is even worse than administration under the Act as it stands. An ex-Advocate-General of Madras expressed himself as follows:—

"My experience both before and after I became Advocate-General is that schemes framed under section 92, Civil Procedure Code, by the courts have not in a majority of cases proved to be successful. They are not more workable or more efficient than the statutory scheme of committees and trustees under the Act of 1863 or the system of hereditary trusteeships."

It has, however, to be remembered that schemes which have come into force are of varying complexity and have settled many matters connected with temples which do not pertain to mere administration and some of which do not fall within the purview of Act XX of 1863 or of this Bill. While therefore clause 39 enables an application to be made to a court for the abrogation of a scheme and for a declaration that the new legislation will apply to the endowment in question, such applications may be made only by the committee, or by a person whose rights have been affected in the case of hereditary endowments by the scheme. Unless on such application the scheme is superseded in whole or in part, so much of the new law as is inconsistent with such scheme will not apply to the religious endowment in question.

Clause 40.—There are large numbers of small village temples whose administration is really controlled by the villagers in common and which is not worth the while of a committee to acquire jurisdiction over. This clause exempts such temples from the operation of the new law except in such matters as the maintenance of proper accounts by the trustees, the right of persons having interest to file suits and so on. It may be mentioned here that the exclusion of these temples from the purview of a measure of this kind was contemplated even more than thirty years ago by one of the committees which attempted to draft a comprehensive Bill of this description.

Clause 41 confers on the Local Government power to delegate their functions subject to certain restrictions and to authorize courts, subordinate to the district court, to entertain suits, applications, etc.

Clause 42 is intended to protect long-established customs and usages in the temple. (Vide S. 79.)

Clause 43 prevents the executive Government from interfering with public religious endowments except in the manner approved by the new law or any other Act for the time being in force. (Vide S. 80.)

Clause 44 contains transitory provisions which are necessitated by the repeal of the Act of 1863. (Vide S. 83.)

Clause 45 is a measure of abundant caution and corresponds to section 239 of the Local Boards Act. (Vide S. 85.)

Schedule I deals with the qualifications of persons entitled to vote at elections of members of committees. The franchise is slightly higher than that fixed for election to local bodies.

Schedule II contains transitory provisions consequent on the repeal of the Act of 1863.

Report of the Select Committee.

We, the undersigned members of the Select Committee, appointed to consider the Madras Hindu Religious Endowments Bill (No. 12 of 1922), have the honour to submit the following report:

- 2. The Bill was published in the Fort St. George Gazette in English on the 5th December, 1922 and in Tamil, Telugu, Malayalam and Kanarese on the 12th December, 1922.
- 3. We have held thirteen sittings in all. At our first sitting, we decided to give all persons and interests, desirous of availing themselves of the opportunity, Itime till the 22nd January to submit written representations on the provisions of the Bill and requests for the examination of witnesses. A notice to this effect was immediately published in the Fort St. George Gazette and in the Madras Mail, Justice, New India and Daily Express. By the due date, we received 249 memorials and other communication and 26 sets of witnesses were offered for examination. Our sittings on the 27th, 28th, 29th and 31st January and on 1st February were fully occupied with the examination of eleven of these witnesses. With reference to the representations we had received and the evidence that we had taken, we discussed the main issues raised therein at our sittings on the 3rd and 4th February and reached certain conclusions, which involved rather extensive changes in the Bill as introduced. At our sittings on the 11th, 12th, 13th and 14th instant we considered in detail a re-draft of that Bill prepared for us on the lines of our conclusions and on the 18th instant we met to consider the final draft and our report.

- 4. While retaining the main features of the original Bill we have elaborated them in some directions and added considerably to them in others. These elaborations and additions have necessitated a re-arrangement of the chapters and a re-grouping of the clauses of the Bill as originally introduced. We consider that no useful purpose will be served by trying to indicate by any difference in type in the frame-work of the Bill as introduced the changes that we have carried out.
- It is admitted that in respect of temples and other religious charities handed over to matadhipathis in specific trust they should be held strictly accountable as trustees and that there is no objection to their administration of such trusts being brought under control. With regard to properties belonging to the math proper, it is claimed that its head is not in the position of a trustee and that interference with his management of such property would be as little justified as interference with private property. The latter, we think, is an untenable position. It is admitted that the head of a math is not at liberty to alienate the corpus of the math property except in circumstances which would almost justify alienation of ordinary trust property. As regards the income from such corpus and what the head of a math may himself earn by way of offerings and gifts, he is, according to the evidence that has been given before us, expected to use it only for purposes connected with the math and with himself as head thereof. Any other appropriation of such funds would be deemed to be improper. We cannot, therefore subscribe to the somewhat extreme view that a math and its endowments and income constitute the absolute personal property of the matadhipathi for the time being; and it is significant that exponents even of this extreme view have conceded before us that, where the circumstances require such a step, it would be desirable to associate the disciples in the administration of an ill-managed institution. The math as an institution exists for the spiritual welfare of its disciples. The matadhipathi is an ascetic and could, ex hypothesi, have no interests other than those which are proper and which subserve the interests of his disciples. Large properties are in the hands of many of them and there is evidence that several of them have mismanaged and misused the properties in their charge. These facts and considerations are ample justification for our declining to drop maths out of the Bill altogether.
- 6. We recognize at the same time that the powers of the head of a math over math property, especially the income therefrom, are wider than those of an ordinary trusteee and that the matadhipathi, by virtue of the spiritual veneration in which he is held by his disciples, occupies a position which entitles him to privileged treatment. We have therefore provided that local

committees shall nothing to do with maths, that, ordinarily, the head of a math need send only a budget and an annual account, and that he should maintain proper accounts and get them audited. It is only in cases where mismanagement is proved or where a number of disciples desire such a course that arrangements for greater control may be devised.

- 7. We have decided to accord similar privileged treatment to certain temples which we have called "excepted temples" and which are defined in clause 5 (5) of the Bill. We have omitted the term "hereditary temples" which was used in the original Bill to describe temples, all or any of the trustees of which are hereditary trustees. The term "excepted 'temple" will exclude cases where even one of the trustees of a temple is non-hereditary. Even among temples in sole charge of hereditary trustees it will exclude cases where the hereditary character of the trusteeship came into being for the first time after 1842. The year 1842 has been chosen as that was the year in which Government began abandoning their control over temples in pursuance of the orders of the Court of Directors directing severance of connexion with all idolatrous institutions. When handing over the institutions which had previously had no hereditary trustees the Government started in certain cases a new line of hereditary trustees after 1842, and we consider that institutions in the sole charge of such trustees are not entitled to any privileged treatment. The truseees of most of the "excepted temples" on the other hand are zamindars and other wealthy landholders or other persons who have made and, in some cases, continue to make voluntary contributions for their support. They take strong exception to control by local committees and any alienation of their sympathies is likely to affect prejudi-cially the pecuniary support which the temples have received and are receiving at their hands.
- 8. To the machinery of control provided in the original Bill we have by a majority decided to add a Central Board or Boards on the lines of the Charity Commissioners in England. A Board will essentially be an administrative body. The local committees formed under Act XX of 1863 have been left too much to themselves. Their work has suffered for want of guidance, control and co-ordination. The Board that is proposed is intended to supply this want. It will also deal directly with the maths and excepted temples which have been exempted from committee control. It will hear appeals from the decisions of committees and exercise, like the Board of Revenue under Madras Regulation VII of 1817, general superintendence over all religious endowments (clause 14). We think that one Board for the whole Presidency will suffice at

the beginning, but it is not unlikely that the volume of work which it will be in charge of will so grow that in the interests of efficient administration more Boards than one will soon become necessary, each having jurisdiction over a group of districts. The Bill makes provision for such a contingency.

- 9. The original Bill provided that trustees should get their accounts audited by certified auditors. Where the auditors have to look for payment to the persons whose accounts they audit. it is not possible to expect thorough independence. We have therefore unanimously decided in favour of audit conducted by an agency appointed and controlled directly by the Government.
- 10. The important additions and amendments we have made in the Bill are referred to in the following pragraphs.

Notes on clauses.—Omitted here and inserted in their proper places in the commentaries.

APPENDIX III.

The Madras Hindu Religious Endowments (Amendment), Act (V of 1944)—(Extracts).

Transitional Provisions.

- Abolition of temple committees constituted or deemed to have been duly constituted under the provisions of the said Act, whether actually or merely deemed to be in existence at the commencement of this Act, are hereby abolished with effect from such commencement.
- Construction of references to temple contained in any enactment in force in the Province or in any notification, order, scheme, rule, form or by-law made under any such enactment and in force in the said Province shall, after the commencement of this Act, be construed as a reference to the Assistant Commissioner concerned:

Provided that it shall be open to the Board to direct that any such reference shall be construed as a reference to itself or to such other authority or person as may be specified by it. 38. (1) All costs, expenses and contributions payable to temple committees under sections 68 and 69 of the said Act immediately before the committees.

Transfer of assets and liabilities of temple commencement of this Act shall be payable to the Board instead, and any assessment

or demand of such sums made before such commencement shall be deemed to be valid and may be continued under the said Act, as amended by this Act.

- (2) Subject to the provisions of sub-section (1), the Board may pass such orders as it thinks fit as to—
- (a) the transfer or disposal otherwise of all property, rights, interests and assets of whatever kind, owned by, or vested in, or held in trust by or for, or used, enjoyed or possessed by, any temple committee abolished by this Act; and
- (b) the transfer or discharge of the liabilities of any such committee.
- 39. All proceedings pending before any temple committee at the commencement of this Act may, in so far as they are not inconsistent with the provisions of the said Act as amended by this Act, be continued under the said Act as so amended, by the

Assistant Commissioner concerned or, if the Board so directs in any case or class of cases, by the Board.

40. All proceedings taken by or on behalf of, or against,

Continuance of proceedings taken by or against temple committees. any temple committee and pending at the commencement of this Act may, thereafter, be continued by or against the Board, subject to the provisions of the said Act as amended by this Act.

41. Any remedy by way of application, suit or appeal which is provided by the said Act as amended by this Act shall be available in respect of pending proceedings.

Remedies available in respect of proceedings under the said Act pending at the commencement of this Act

as if the proceedings in respect of which the remedy is sought had been instituted after such commencement.

42. Any order passed, action taken or thing done by

Orders passed, etc., by temple committees o be valid.

a temple committee before the commencement of this Act shall, subject to the provisions of the said Act as amended by this Act and to such directions as the Board

may by general or special order give in this behalf, be deemed to have been taken by the Assistant Commissioner concerned or the Board, as the case may be, unless and until the same is superseded by such Assistant Commissioner or the Board.

43. Contributions shall be levied from maths, temples

Levy of contributions for fasli commencing on 1st July 1943.

and specific endowments for the fasli year commencing on the 1st day of July 1943 as if the amendments made by this Act to section 69 had come into force on the 1st day of July 1943.

and servants of temple committees 44. All officers

Officers and servants of temple committees deemed to be officers and servants of the Board.

holding office immediately before the commencement of this Act shall, subject to such directions, if any, as the Provincial Government may by general or special order give in this behalf, be deemed to have become officers and servants of the

Board with effect from such commencement.

45. If any difficulty arises in giving effect to the provisions of this Act or of the said Act as the Provincial amended by this Act, remove Power to difficulties. Government as occasion may require may by order do anything which appears to them necessary for the purpose of removing the difficulty.

APPENDIX IV.

The Madras Hindu Religious Endowments (Amendment) Act X of 1946-Extracts.

TRANSITIONAL PROVISIONS.

43. The Committee appointed under the Religious Endowments Act, 1863, for the Presidency town and whether actually or merely deemed to be in existence at the commencement of this Act is hereby abolished with effect from such commencement.

Any reference to the said Committee or the president, vice-president or member thereof contained in any enactment in force in the Presidency town or in any notification, order, scheme, rule, form or by-law made under any such enactment and in force in the Presidency town shall, after the commencement of this Act, be construed as a reference to the Assistant Commissioner concerned.

Any reference to a temple committee or the president, vicepresident or member thereof contained in any enactment in force in the Province or in any notification, order, scheme, rule, form or by-law made under any such enactment and in force in the said Province shall, after the commencement of this Act, be construed as a reference to the Assistant Commissioner concerned:

Provided that it shall be open to the Board to direct that any such reference shall be construed as a reference to itself or to such other authority or person as may be specified by it.

- 45. The Board may pass such orders as it thinks fit as to-
- (a) the transfer or disposal otherwise of all property, rights, interests, and assets of whatever kind owned by, or vested in, or held in trust by or for, or used, enjoyed or possessed by the said Committee, and
- (b) the transfer or discharge of the liabilities of the said Committee.
- 46. All proceedings pending before the said Committee at the commencement of this Act may, in so far as they are not inconsistent with the provisions of the said Act as amended by this Act, be continued under the said Act as so amended, by the Assistant Commissioner concerned or, if the Board so directs in any case or class of cases, by the Board.
- All proceedings taken by, or on behalf of, or against, the said Committee and pending at the commencement

of this Act, may, thereafter, be continued by or against the Board, subject to the provisions of, and in so far as they are not inconsistent with, the said Act, as amended by this Act.

- 48. Any order passed, action taken or thing done by the said Committee before the commencement of this Act, shall, subject to the provisions of the said Act as amended by this Act and to such direction as the Board may give in this behalf, be deemed to have been taken by the Assistant Commissioner concerned or the Board, as the case may be, unless and until the same is superseded by such Assistant Commissioner or the Board.
- 49. Every non-hereditary trustee of a temple in the Presidency town lawfully holding office on the date of the commencement of this Act shall be deemed to have been duly appointed under the said Act as amended by this Act, on such date but shall be entitled to hold office only for one year from such date.
- 50. Contributions payable under sub-section (1) of section 69 of the said Act as amended by this Act, by maths, temples and specific endowments in the Presidency town and the cost of auditing payable under sub-section (2) of section 69 of the said Act as amended by this Act by maths, temples and specific endowments in the Province shall be levied for the fasli year commencing on the 1st day of July 1945, as if this Act had come into force on the 1st day of July 1945.
- 51. All proceedings under section 84, of the said Actrelating to disputes as to whether a temple is an excepted temple or not and pending before the Board or in Courts at the commencement of this Act shall stand abated and shall not be proceeded with.
- 52. If any difficulty arises in giving effect to the provisions of this Act or of the said Act as amended by this Act, the Provincial Government as occasion may require may by order do anything which appears to them necessary for the purpose of removing the difficulty.

APPENDIX V.

The Madras Temple entry authorization and Indemnity
Act, 1939.

ACT No. XXII of 1939.

[4th September, 1939.

An Act to authorize and indemnify trustees, officers and other persons in respect of entry into and offer of worship in Hindu temples by certain classes of Hindus who by custom or usage are excluded from such entry and worship.

Whereas there has been a growing volume of public opinion demanding the removal of the disabilities imposed by custom and usage on certain classes of Hindus in respect of their entry into and offering worship in Hindu temples;

AND WHEREAS it is just and desirable to authorize the trustees or other authorities in charge of such temples to

⁽¹⁾ Madras Temple Entry Authorisation and Indemnity Act (XXII of 1939)—Scope of the meaning of "charities" in entry 34—Provincial Legislation if covered by that entry. Entry No. 34 of List II of the seventh schedule to the Government of India Act, 1935, opens with the term "charities" a term of very wide legal significance in the law of England, Ireland, Scotland and British India. A power to legislate in respect of "charities" would always clearly include power to legislate in respect of "charitable institutions" and "charitable endowments." Nothing can be added to the scope or ambit of the power to legislate in respect of "charities" by the addition of the words "charitable institutions" and "charitable endowments." These additional phrases in Entry No. 34 are only illustrative of the directions, which the power, the really enabling power, to legislate in respect of charities may, amongst others, take. The word "charities" is an appropriate generic term of wide scope and meaning apt to include all public, secular, charitable and religious trusts and institutions recognised as such by British Indian Law, and a power to legislate in respect of "charities" will include a power to legislate in respect of "charities" will include a power to legislate in respect of "charities" endowments will not in the context in which it is used cut down the wide scope of the power of legislation conferred by the opening word of the Entry any more than the addition of the words charitable institutions and charitable endowments. It follows that the Madras Provincial Legislature had power by virtue of Entry No. 34 in List II to legislate in respect of religious institutions within the Province of Madras in the manner in which it purported to legislate by the Madras Temple Entry Authorisation and Indemnity Act, 1939. The said Act is hence a valid enactment. 1946 F.L.J. 57 = 59 L.W. 379=(1946) 2 M.L.J. 17 (F.C.).

throw them open to, and permit, persons belonging to the said classes to enter into and offer worship in such temples, and that no person should suffer any civil or criminal penalty or disadvantage by reason of anything done in connexion with such entry and worship;

AND WHEREAS a situation has arisen in the city of Madura and elsewhere in the Province of Madras in which it has become necessary to indemnify and protect officers of Government, trustees, priests and other persons in respect of acts done, steps taken or alleged failure of duty on the 8th day of July, 1939 and thereafter of the nature aforesaid;

It is hereby enacted as follows:-

(1) This Act may be called THE MADRAS TEMPLE ENTRY AUTHORIZATION Short title and ex-AND INDEMNITY ACT, 1939.

- (2) It extends to the whole of the Province of Madras.
- 2. No officer of Government, no executive authority, officer or servant of any Local Board or Municipality, no trustee, officer or other of authority constituted or acting under the and other for certain Madras Hindu Religious Endowments Act, 1926, or any other law, no priest or person

Indemnification officers persons acts, etc.

officiating as such and no person entering or offering worship or assisting or acting under the authority of or with the permission of such officer, servant, authority, trustee, priest or person officiating shall be prosecuted, sued or otherwise proceeded against in respect of any act done or step taken or any alleged failure of duty on the 8th day of July 1939 or on any subsequent date up to the commencement of this Act, in furtherance of, or in connexion with, the entry into and offer of worship in the Sri Meenakshi Sundareswarar temple in the city of Madura or any other Hindu temple in the Province of Madras by any person belonging to classes of Hindus hitherto excluded by custom or usage from such entry or worship;

and all officers, servants, authorities, trustees, priests and other persons aforesaid are hereby indemnified and discharged from all liability in respect of all such acts, steps and alleged failure of duty.

3. If in the opinion of the trustee or other authority in charge of any Hindu temple in the Province of Madras the worshippers of such temple Throwing open of temples in certain cirare generally not opposed to the removal cumstances. of the disability imposed by custom or

usage on certain classes of Hindus in regard to entry into or offer of worship in such temple, such trustee or other authority may, with the approval of the Provincial Government and notwithstanding anything contained in the Madras Hindu Religious Endowments Act, 1926, or any other law, throw open the temple to such classes and thereafter persons belonging to such classes shall have the right to enter into and offer worship in such temple:

Provided that in the case of the temples specified in the Schedule to this Act and other Hindu temples in the Province which have been thrown open to the classes aforesaid before the commencement of this Act, such approval shall not be required and the said temples shall be deemed to have been thrown open to the classes aforesaid under the provisions of this section.

Explanation.—If more persons than one are the trustees or constitute the other authority in charge of the temple, a majority of them shall be entitled to decide and act in terms of this section.

4. No person who enters or offers worship in any temple thrown open or deemed to be thrown open under the provisions of section 3 shall by No actionable wrong reason only of such entry or worship be or offence committed by entry or worship in deemed to have committed any actionable temples thrown open. wrong or offence or be sued or prosecuted therefor.

No suit for damages, injunction or declaration or for 5. any other relief, no prosecution for any offence, and no application or other proceeding under the Madras Hindu Religious Endowments Act, 1926, or any other

Sanction for institution or continuance of action.

law shall be instituted in respect of any entry into or worship in any temple thrown open or deemed to have been thrown open under section 3, on the ground that such entry or worship is against the usage or custom which excludes certain classes of Hindus from such entry or worship; and no suit or other proceeding shall be instituted in respect of such entry or worship on the ground that there has been any irregularity or failure in complying with the provisions of section 3, without the previous sanction of the Provincial Government. No suit, prosecution, application or proceeding of the nature aforesaid instituted before the commencement of this Act shall be continued thereafter without the sanction of the Provincial Government.

6. In section 40 of the Madras Hindu Religious Endowments Act, 1926, after the words and figures "subject to the provisions of the Malabar Temple Entry Act, 1938" the words and figures "and the Madras Temple

Entry Authorization and Indemnity Act, 1939" shall be inserted.

SCHEDULE.

(See proviso to section 3.)

1. Sri Meenakshi Sundareswarar temple, Madura.

2. Sri Kudalalagar temple, Madura.

- 3. Sri Sundararajaperumal temple, Valayapatti, Melur taluk, Madura district.
- 4. Sri Kalamegaperumal temple, Tirumohur, Madura taluk, Madura district.

5. Sri Brahadeeswarar temple, Tanjore.

6. Sri Tirukuttalanathaswami temple, Courtallam, Tenkasi taluk, Tinnevelly district.

7. Sri Kasi Viswanathaswami temple, Tenkasi Taluk, Tinnevelly district.

APPENDIX VI.

The Malabar Temple Entry Act, 1938.

ACT No. XX of 1938.

[18th January, 1939.

An Act to remove the disabilities of certain classes of Hindus in regard to entry into temples in the district of Malabar.

Whereas the disabilities imposed by custom and usage on certain classes of Hindus in respect of their entry into, and offering worship in, Hindu temples should be removed,

AND WHEREAS, however, doubts have been entertained whether the trustees of such temples have the power in law to make any such innovation in practice,

AND WHEREAS it is just and expedient that these doubts should be removed and the trustees should be empowered by law to extend to all classes of Hindus the right of entry into, and worship in, temples if the Hindus in the locality who are now entitled to such entry are generally in favour of such extension,

AND WHEREAS, further, such extension of rights and privileges in Hindu temples to classes hitherto excluded has been recently ordered and peacefully brought into effect in one part of Kerala, and by reason of common traditions and identity of language, customs, forms of worship and the like, the removal of the disabilities aforesaid has been not only more insistently demanded, but also made more easy of accomplishment in the first instance, in another part of Kerala,

It is hereby enacted as follows:-

- 1. (1) This Act may be called THE Short title and extent. MALABAR TEMPLE ENTRY ACT, 1938.
 - (2) It extends to the whole of the District of Malabar.
- Definitions. 2. In this Act, unless there is anything repugnant in the subject or context—
- (1) 'Board' means the Board of Commissioners constituted under section 10 of the Madras Hindu Religious Endowments Act, 1926, or any other authority in which the powers and functions of the said Board in respect of a temple may for the time being be vested;
- (2) 'excluded class' means any caste or class of the Hindu community which, by reason of any established usage or custom, is excluded from entering the temple concerned, or which, though admitted into the precincts of the temple, is not allowed entry into any part of the temple where the bulk of the worshippers are allowed:

- (3) 'prescribed' means prescribed by rules made under section 9;
- (4) 'temple' means a place, by whatever designation known, which is used as a place of public worship by the Hindu community generally except excluded classes and which was at at any time assessed to contribution under section 69 of the Madras Hindu Religious Endowments Act, 1926, on an annual income of not less than Rs. 5,000; and in any context with reference to entry shall mean every part of the temple which is open to the bulk of the worshippers:

Provided that any temple which has been before the 1st of April 1938 declared by final decree or order of a competent court to be private property or accepted by the Board to be private property shall not be a temple for the purposes of this Act:

Provided further that any temple in respect of which a question as to whether it is private property has been already raised in a suit in a court of law or in an application before the Board registered before the 1st of April 1938, the temple shall not be deemed to be a temple for the purposes of this Act until the final decision in such a proceeding, and thereafter it shall not be, or shall be, a temple for the said purposes according as the final decision declares or accepts the temple to be private property or not.

- (5) 'trustee' means a person by whatever designation known, in whom the administration of a temple is vested, whether in a hereditary capacity or not;
- (6) 'voters' means the Hindu voters, other than those belonging to excluded classes, on the electoral roll of the Madras Legislative Assembly for the time being in force relating to the general constituency of the revenue taluk in which the temple is situated including the municipal areas therein, who are included in a list prepared under the rules made under section 9; and
- (7) 'worship' means such religious service as the bulk of the worshippers participate in, in accordance with the provisions of such regulations as may be made by the trustees for

the maintenance of order and cleanliness and the due observance of the religious rites and ceremonies performed in the temple.

3. (1) On receipt by the trustees of a temple of a re-

Requisition to trustees to throw open temples to excluded classes.

Requisition to trusting signed by not less than fifty voters requesting them to throw open the temple to persons belonging to excluded classes, the trustees shall forward the requisition to the Provincial Government and the Provincial Government the trustees to refer the matter to the voters and ascertain their opinion by votes taken by the prescribed method:

Provided that if the Provincial Government are of opinion that the requisition is not made for the furtherance of the objects of this Act, they may direct that no action be taken thereon.

- (2) Where on such reference the result is found by a majority of the votes to be in favour of throwing the temple open to persons belonging to excluded classes, the trustees shall publish in the prescribed manner an order to the effect that the temple shall thereafter be open to persons belonging to excluded classes.
- 4. (1) Notwithstanding any law, custom or usage to the contrary, it shall be open to the trustees of a temple to publish in the prescribed manner a notice to the effect that they propose to make an order throwing the temple open to persons belonging to excluded classes.

Such notice shall also state that objections to the proposal may be preferred to the trustees at any time within one month from the date of the publication of the notice.

(2) If within one month from the date of the publication of the notice referred to in sub-section (1), written objections to the proposal are preferred by not less than fifty voters, the same shall be forwarded to the Provincial Government, and thereafter, on a direction from them, the question whether the temple shall or shall not be thrown open to persons belonging to excluded classes shall be referred for the opinion

of the voters as if a requisition had been received under subsection (1) of section 3.

- (3) If in any case where action under sub-section (1) is taken by the trustees, no objection as specified in sub-section (2) is preferred, or if on a reference made under sub-section (2), the result is found to be in favour of throwing the temple open to persons belonging to excluded classes, the trustees shall publish in the prescribed manner an order to the effect that the temple shall thereafter be open to persons belonging to excluded classes.
- 5. The Provincial Government may, at any time, before the results of any reference to the voters are announced, order that all further action in respect of such reference shall be suspended and upon such order all previous proceedings relating thereto shall be deemed to have been cancelled.
- Power of trustees to throw open temples to excluded classes without reference to voters in certain cases.

 One a reference made to the voters under subsection (2) of section 3 or sub-section (2) of section 4 the result is found to be in favour of throwing a temple open to persons belonging to excluded classes, the trustees of any other temple situated in the same revenue taluk, within two years

from the date of such reference, may of their own motion and shall on receipt of a requisition in writing signed by not less than fifty voters, publish in the prescribed manner an order to the effect that the temple shall be open to persons belonging to excluded classes.

- 7. Where an order has been published under sub-section (2) of section 3, or sub-section (3) of Section 3 (2), 4 (3) or 6. Section 4, or section 6, it shall be lawful, notwithstanding any custom or usage to the contrary, for any person belonging to excluded classes to enter the temple concerned and participate in worship therein.
- 8. Where on a reference made to the voters under subsection (1) of section 3 or sub-section (2) of section 4, the result is found to be against throwing the temple open to persons be-

longing to excluded classes, no further proceedings shall be taken either under sub-section (1) of section 3 or under sub-section (1) of section 4 for a period of two years from the date of such reference in respect of such temple or any other temple in the same revenue taluk.

- 9. (1) The Provincial Government may make rules for the purposes of carrying into effect the provisions of this Act.
- (2) Without prejudice to the generality of the foregoing power the Provincial Government may make rules—
- (a) with reference to all matters allowed to be prescribed by this Act;
- (b) as to the form and presentation of the requisitions and objections referred to in sub-section (1) of section 3, section 4 and section 6;
- (c) as to the publication of orders and notices by trustees;
- (d) as to the method by which the opinion of the voters shall be ascertained;
- (e) as to the preparation and publication of lists of voters, and the decision of all disputes which may arise in connexion therewith; and
- (f) as to the decision of all disputes which may arise in respect of requisitions and objections from voters under sections 3, 4 and 6 or in respect of references to voters under sections 3 and 4 and the ascertainment and publication of the results of such references.
- (3) All rules made under this section shall be published in the official gazette and on such publication shall have effect as if enacted in this Act.
- 10. If any difficulty arises in giving effect to the provisions of this Act the Provincial Government, as occasion requires, may order the doing of anything necessary for the purpose of removing the difficulty.

- 11. (1) If any question arises as to whether a place is or is not a temple as defined in this Act Power to decide disputes.

 Power to decide disputes.

 decision of the Provincial Government and their decision shall be final.
- (2) The Provincial Government shall have power to exempt from the provisions of this Act such institutions as, in their opinion, are in the nature of family temples and may be exempted without prejudice to the objects of this Act.
- 12. In section 40 of the Madras Hindu Religious

 Amendment of section 40, Madras Act figures "Subject to the provisions of the Malabar Temple Entry Act, 1938," shall be inserted at the commencement.

APPENDIX VII.

The Tirumalai-Tirupati Devasthanams Act (XIX of 1933).

[AMENDED BY MADRAS ACT XII of 1939.]

[2nd May, 1933 and 26th May, 1933.]

An Act to provide for the better administration and governance of the Tirumalai-Tirupati Devasthanams.

Whereas it is expedient to provide for the better administration and governance of the Tirumalai-Tirupati Devasthanams and for the proper utilization of the funds of the said Devasthanams not required for the usual and ordinary purposes thereof;

AND WHEREAS the previous sanction of the Governor-General has been obtained to the passing of this Act;

It is hereby enacted as follows:-

CHAPTER I.

PRELIMINARY.

Short title, exent and commencement.

1. (1) This Act may be called THE
TIRUMALAI-TIRUPATI DEVASTHANAMS
ACT. 1932.

- (2) It applies to ¹[the Tirumalai Hills area as notified by the Provincial Government in the Official Gazette, from time to time], the temples specified in Schedule I and the endowments thereof, and the educational institutions specified in Schedule II.
- (3) It shall come into force on such date as the Provincial Government may, by notification in the Official Gazette, appoint.

Repeals. 2. (1) On the coming into force of this Act—

- (a) the arrangement made by the Provincial Government in 1843 for the management of the Tirumalai-Tirupati Devasthanams and the scheme settled by the Privy Council in Appeal No. 6 of 1906, together with the rules framed thereunder, shall cease to be operative; and
- (b) the provisions of the Madras Hindu Religious Endowments Act, 1926, except section 44-A shall cease to apply to the said Devasthanams.
- (2) The Tirupati Devasthanam Schools Act, 1914, is hereby repealed.

Saving of powers of Advocate-General.

3. [Omitted by Adaptation of Indian Laws Order in Council, 1937].

Definitions.

4. In this Act, unless there is anything repugnant in the subject or context,

- (i) "Board" means the Board constituted under section 10 of the Madras Hindu Religious Endowments Act, 1926, and having territorial jurisdiction over the revenue district of Chittoor;
- (ii) "Commissioner" means the Commissioner of the Tirumalai-Tirupati Devasthanam appointed under section 18;
- (iii) "Committee" means the Tirumalai-Tirupati Devasthanams Committee constituted under Chapter II;
- (iv) "Court" means the principal civil Court exercising ordinary original civil jurisdiction over Tirumalai and Tirupati;

⁽¹⁾ Inserted by Madras Act (XII of 1939).

- (v) "Devasthanams" or "Tirumalai-Tirupati Devasthanams" means the temples specified in Schedule I and the endowments thereof and shall include the educational institutions referred to in Schedule II;
- (vi) "Endowment" means all property belonging to, given or endowed for the support of the devasthanams or for the performance of any service or charity connected therewith, and includes the temples and any offerings made to the idols therein;
- (vii) "Hereditary officer" means the holder of an office in the devasthanams, succession to which devolves by hereditary right or is otherwise regulated by usage;

(viii) "Mahant" means the head for the time being of

the Hathiramji Math situated in Tirupati;

(ix) "Person having interest" means a person who is entitled to attend at the performance of worship or service in any temple and includes the Board, the Committee, and the Commissioner;

(x) "Prescribed" means prescribed by rules made by the

[Provincial Government] under this Act;

(xi) "Specific endowment" means any property endowed or money invested for the performance of any particular service or of any particular charity connected with the devasthanams;

(xii) "Temple" means any religious institution specified in Schedule I together with the appurtenances thereto; 1["and

(xiii) 'Tirumalai Hills area' means the area notified as such under sub-section (2) of section 1."]

CHAPTER II.

THE COMMITTEE.

5. The administration of the devasthanams shall vest in a committee called the Tirumalai-Tirupati Devasthanams to in committee.

Devasthanams Committee, which shall be a body corporate, having perpetual succession and a common seal, and shall sue and

be sued by the said name.

⁽¹⁾ Inserted by Madras Act (XII of 1939).

- (2) It applies to ¹[the Tirumalai Hills area as notified by the Provincial Government in the Official Gazette, from time to time], the temples specified in Schedule I and the endowments thereof, and the educational institutions specified in Schedule II.
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⁽¹⁾ Inserted by Madras Act (XII of 1939).

- 6. (1) The committee, shall consist of seven members appointed by the [Provincial Government] of whom the Mahant, if willing to serve, shall be one.
- (2) Every member shall hold office for a period of three years from the date in which his appointment is notified in the Official Gazette.
- 7. No person shall be eligible for appointment as a member of the committee, if such person is not a Hindu, or if he
- (i) is of unsound mind, a deaf-mute or suffering from leprosy; or

(ii) is an undischarged insolvent; or

- (iii) is an office-holder or a servant of the devasthanams or is in receipt of any emolument or perquisite from the devasthanams; or
- (iv) is interested in a subsisting contract for making any supplies to or executing any work on behalf of the devasthanams;
 or
- (v) is employed as a legal practitioner on behalf of the devasthanams or as legal practitioner against the devasthanams:

Provided that the disqualification specified in clause (iii) shall not apply to the Jiyengars or the Acharyapurushas of the devasthanams.

- 8. Any member of the committee including the Mahant may express his inability to serve as a Relinquishment of member, or resign his office as a member, by giving a notice in writing to the Commission and on such expression of inability or resignation, his office shall become vacant.
- 9. If in the opinion of the [Provincial Government] any member of the committee including the Provincial Government to declare office vacant in certain cases. Mahant has failed or is unable to attend to the duties of his office for a period of three months, or if he becomes disqualified for any of the reasons mentioned in section 7, or if he is absent

for any of the reasons mentioned in section 7, or if he is absent from the meetings of the committee for six consecutive months. or if three consecutive meetings are not held within that period, from three consecutive meetings of the committee, whichever covers a longer period, the [Provincial Government] shall, by notification in the Official Gasette, declare that his office has become vacant.

Eligibility of persons for fresh appointment.

10. Any person ceasing to be a member shall, unless disqualified under section 7, be eligible for fresh appointment.

- Dissolution and reconstitution of committee.

 Dissolution and reconstitution of committee.

 Dissolution and perform, or persistently makes default in performing, the duties imposed on it under this Act, or exceeds or abuses its powers, the [Provincial Government] may, on the recommendation of the Board, by notification, dissolve the committee and direct the immediate reconstitution of another committee in accordance with the provisions of this Act.
- (2) Before issuing a notification under sub-section (1), the [Provincial Government] shall communicate to the committee the grounds on which they propose to do so, fix a reasonable time for the committee to show cause against the proposal, and consider its explanation or objections, if any.
- (3) Where a committee is dissolved or superseded under this section, the Commissioner shall, until the constitution of another committee, have power to exercise the powers and perform the functions of the committee.

Quorum. 12. The quorum for a meeting of the committee shall be three.

13. The members of the committee shall elect a PrePresident of committee. sident from among themselves, provided that until the expiration of three years from the date of the coming into force of this Act, the Mahant, if he is a member of the committee and willing to act as President, shall be the President.

Presidency at meetings of committee.

14. Every meeting of the committee shall be presided over by the President; and in his absence by a member chosen by the meeting to preside for the occasion.

- Decision of questions arising at a meeting of the committee shall be decided by a mojority of the votes of the members present thereat and in every case of equality of votes, the President or the person presiding shall have and exercise a casting vote.
 - No member of the committee shall receive or be paid any salary or other remuneration from the funds of the devasthanams except such travelling or halting allowances as may be prescribed.
 - Duties of committee.

 Duties of committee.

 made thereunder, the committee shall manage the properties and affairs of the devasthanams and arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its usage.

CHAPTER III.

THE COMMISSIONER AND ESTABLISHMENT.

- 18. (1) The [Provincial Government] shall appoint a Commissioner who, unless sooner removed by them for sufficient cause, shall hold office for a period of three years. An outgoing Commissioner shall be eligible for re-appointment.
- (2) When any temporary vacancy occurs in the office of Commissioner, the [Provincial Government] may fill up the vacancy.

Commissioner to be a Hindu. 18-A. The Commissioner shall be a person professing the Hindu religion.

- Conditions of service and pay of Commissioner.

 Conditions of service and pay of Commissioner shall be a whole-time officer of the devasthanams and shall not undertake any work unconnected with his office without the permission of the committee.
- (2) The Commissioner shall be paid out of the funds of the devasthanams such salary not exceeding Rs. 1,200 per mensem as may, from time to time, be fixed by the [Provincial Government].
- (3) If the Commissioner is a civil or military officer in the service of the Government, the devasthanams shall ¹[make such contribution to the leave allowances, pension and provident fund of the Commissioner as may be required, by the conditions of his service under the Crown, to be made by him or on his behalf].
- Powers and duties of Commissioner.

 20. (1) The Commissioner shall perform the duties and exercise the powers specified by sections 21 to 26 and section 38.
- (2) He shall be the chief executive officer of the devasthanams and shall, subject to the control of the committee, have general power to carry out the other provisions of this Act.
- 21. The Commissioner shall be responsible for the custody of all records and properties of the devasthanams, and shall arrange for the proper collection of the offerings made in the temples.
- Powers of Commissioner to lease, etc.

 22. (1) The Commissioner shall have power to lease out for a period not exceeding one year the lands and buildings of the devasthanams, which are ordinarily leased out.
- (2) He shall have power to call for tenders for works or supplies and accept such tenders when the amount or value thereof does not exceed Rs. 5,000.

⁽¹⁾ Substituted by the Government of India (Adaptation of Indian Laws Order) in Council, 1937.

- 23. The Commissioner may, in cases of emergency, direct the execution of any work or the Extraordinary powers doing of any act, which is not provided for in the budget for the year and the immediate execution or the doing of which is, in his opinion, necessary for the preservation of the properties of the devasthanams or for the service or safety of the pilgrims resorting to the devasthanams; and may direct that the expenses of executing such work or doing the act shall be paid from the funds of the devasthanams. The Commissioner shall forthwith report to the Committee the action taken under this section and the reasons therefor.
 - 24. (1) After the appointment of the first Commissioner, Establishment he shall, as soon as may be, prepare and schedule. Submit to the committee a schedule setting forth the designations and grades of the officers and servants who should, in his opinion, constitute the establishment of the devasthanams and embody his proposals with regard to the salaries and allowances payable to them; and such schedule shall come into force, on approval by the committee.
 - (2) No change shall be effected in such schedule except at the instance of the Commissioner and with the sanction of the committee.
- (3) The creation of any new appointment carrying a salary of not less than Rs. 200 per mensem shall be subject to the previous sanction of the Board.
- 25. The Commissioner shall have power to appoint all officers and servants of the devasthanams Appointment of whose salary is below Rs. 200 per mensem, officers and servants. not being hereditary officers or holders of offices to which hereditary officers have power to appoint. The committee shall have power to appoint other officer and servants of the devasthanams not being hereditary officers or holders of offices to which hereditary officers have power to appoint:

Provided that the Commissioner may make temporary provision when necessary for the carrying on of the duties of a

vacant hereditary office or office to which a hereditary officer has power to appoint and report the matter to the committee at its next meeting.

- 26. (1) The Commissioner may fine, reduce, suspend, remove or dismiss any non-hereditary officer or servant of the devasthanams whom he is competent to appoint, for neglect of duty, breach of discipline, carelessness or other misconduct.
- (2) The orders of the Commissioner fining an officer or servant drawing a salary not exceeding Rs. 25 per mensem shall be final. Against any other order of punishment by the Commissioner, there shall be an appeal to the committee whose decisions thereon shall be final.
- (3) The Commissioner may, if he has reason to believe that any officer or servant not being an officer or servant referred to in sub-section (1) has been guilty of neglect of duty, breach of discipline, carelessness or other misconduct, suspend such officer or servant pending the orders of the committee. The Commissioner shall report the fact of such suspension with the reasons therefor to the committee at its next meeting.
- (4) The committee may fine, reduce, suspend, remove or dismiss any officer or servant appointed by itself and any here-ditary office-holder or servant of the devasthanams, for neglect of duty, breach of discipline, carelessness or other misconduct. The order of the committee shall be subject to an appeal to the Board. Subject to the result of such appeal, if any, the order of the committee shall be final. The order of the Board on any such appeal shall be final.
- 27. Subject to the provisions of this Act, the committee may make regulations regarding the methods of recruitment, conditions of service, pay and allowances, discipline and conduct of the officers and servants constituting the establishment of the devasthanams.

committee at its

CHAPTER IV.

ADVISORY COUNCILS.

Constitution of Advisory Councils. 28. (1) There shall be constituted—

- (i) an advisory council consisting of the representatives of the jiyengars, the archakas, the acharyapurushas and other mirasidars of the devasthanams for the purpose of advising the committee in the administration of the religious affairs of the devasthanams; and
- (ii) another advisory council consisting of the representatives of the ryots of the devasthanams for the purpose of advising the committee in the management of the estates of the devasthanams.
- (2) These advisory councils shall be constituted in the manner prescribed.
- 29. The [Provincial Government] may make rules regarding the appointment of a chairman for each of the said councils, for the conduct of business at meetings thereof, and the subjects on which the advice of these councils may be taken.

CHAPTER V.

THE BOARD.

- Power of Board to call for all such information and accounts as may in its opinion be necessary for reasonably satisfying itself that the devasthanams are properly maintained, the endowments thereof are properly administered and their funds duly appropriated to the purposes for which they were founded or exist; and the Commissioner or the committee shall, on such requisition, furnish such information and accounts to the Board.
- 31. The [Provincial Government] shall annually appoint an auditor to audit the accounts of the devasthanams and fix the remuneration which shall be paid to such auditor from the funds thereof.

The auditor shall send a copy of his report to the [Provincial Government] who may pass such orders thereon as they deem fit.

- 32. Within three months after the close of each fasli Administration Repear, the committee shall submit to the Board a report of the administration of the affairs of the devasthanams during the fasli in such form as the [Provincial Government] may fix. The Board shall review the report and submit a copy of the same to the [Provincial Government] with its remarks thereon.
 - Bye-laws. 33. The Board may make by-laws as to-
- (i) the maintenance of the records, accounts of receipts and expenditure and registers relating to the devasthanams;
- (ii) the custody of the records and documents of the devasthanams; and
 - (iii) the investment of the funds of the devasthanams.
- Inspection of properties, etc. belonging to devasthanams.

 Of the Board deputed by him in this behalf may inspect any movable or immovable property belonging to, and all records, correspondence, plans, accounts and other documents relating to the devasthanams.

 All officers and servants of the devasthanams shall afford necessary facilities for such inspection.
- Annual contribution to the Board.

 Annual contribution to the Board.

 Annual contribution tribution equivalent to one and a half per centum of their income calculated in such manner as may be prescribed. If the amount of contribution demanded by the Board is not paid within the time prescribed, it shall, on the application of the President of the Board, be recovered by the Collector of the Chittoor district as if it were an arrear of land revenue and paid over to the said President of the Board.

¹[CHAPTER V-A.

SANITARY CONTROL, ETC., OF THE TIRUMALAI HILLS AREA.

35-A. The Provincial Government may, by notification

Madras Act XIV of 1920 and other enactments relating to public health to apply to Tirumalai Hills area subject to specified modifications and restrictions. in the Official Gazette, direct that the provisions of the Madras Local Boards Act, 1920, or of any other enactment for the time being in force in the Province of Madras and relating to public health, shall apply to the Tirumalai Hills area only to such extent and subject to such modi-

fications and restrictions as may be specified in the notification. In particular, the notification may authorize the Commissioner, in the Tirumalai Hills area, to perform the duties and exercise the powers assigned to a panchayat and its president or to any other authority or officer under the provisions so applied, subject to such control as may be specified in the notification.]

CHAPTER VI.

UTILIZATION OF FUNDS.

Purposes for which funds of devasthanams may be utilized for all or any of the following purposes:—

(i) the administration and management of the devasthanams and the maintenance of the educational institutions

referred to in Schedule II;

(ii) the foundation and maintenance of hospitals and dispensaries for the relief of the pilgrims and worshippers visiting the temples;

(iii) the construction and maintenance of choultries and rest-houses for the use and accommodation of all classes of

pilgrims;

(iv) the provision of water-supply and other sanitary

arrangements to the pilgrims;

 $^{2}[(v)]$ the establishment and maintenance of a veterinary hospital for the animals of the devasthasams;

(1) After Chapter V, new Chapter V-A, inserted by Madras Act XII of 1939.

⁽²⁾ In S. 36, Clauses (v) and (vi) renumbered as Clauses (vii) and (viii) respectively and after clause (iv), clauses (v) and (vi) inserted by *Ibid*.

- (vi) the acquisition of any lands or other immovable property, which is authorized by the Provincial Government;]
- (vii) the construction and maintenance of roads and communications and the lighting thereof for the convenience of the pilgrims and worshippers; and
- (viii) the training of archakas to perform the religious worship and ceremonies in the devasthanams, and the training of Adhyapakas and Vedaparayanikas.
- 37. (1) The committee may, without prejudice to the Utilization of surpurposes referred to in section 36 and plus funds. with the previous sanction of the Board, order that the surplus funds of the devasthanams be utilized for—
- (i) the establishment of a university or college in which special provision is made for the study of Hindu religion, philosophy and sastras and for promoting the cultivation of Indian arts and architecture;
- (ii) promoting the study of Sanskrit and the Indian vernaculars; ¹[*];
- ¹[(iii) the establishment and maintenance of a hospital for the benefit of Hindus generally;
- (iv) the establishment and maintenance of an asylum for Hindu lepers;
- (v) the construction and maintenance of a poor home for destitute persons professing the Hindu religion who are physically disabled and helpless; and]
- (vi) any charitable, religious or educational purpose not inconsistent with the objects of the devasthanams.
- (2) The committee may, with the previous sanction of the Board, modify or cancel any order passed under sub-section (1).
- (3) The order of the committee under sub-section (1) or sub-section (2) shall be published in the prescribed manner.

⁽¹⁾ In sub-sec. (1) of S. 37, the word "and" at the end of clause (ii) omitted; clause (iii) re-numbered as clause (vi); and after clause (ii) new clauses (iii) to (v) inserted by Madras Act XII of 1939.

- (4) Any person having interest may, within six months of the date of such publication, institute a suit in the court to modify or set aside such order. Subject to the result of such suit, the order of the committee shall be final.
- (5) Any decision of the court under sub-section (4) may, at any time, for sufficient cause, be modified or cancelled by the court on the application of the committee. CHAPTER VII.

GENERAL.

- 8. (1) The commissioner shall, in every fasli year, prepare in the prescribed form, a budget estimate of the receipts and expenditure of the devasthanams for the following fasli year, and place it before the committee which may approve it without modification or with such modifications as it deems fit.
- (2) A copy of the budget as passed by the committee shall be sent to the Board before the end of May of the year previous to that for which the budget is prepared.
- 39. (1) The Board shall itself that adequate provision has been Budget to provide for working balance, made in the budget fo the prescribed working balance and for meeting all the liabilities of the devasthanams. n religion -who are
- (2) Where such adequate provision has not been made in the budget, the Board shall order such provision to be made and amend the budget accordingly.
- 40. The committee may delegate Delegation of powers to the Commissioner such of its powers, to Commissioner. duties or functions as may be prescribed.
- 41. No sale or mortgage and no lease for more than five years of any immovable property belonging to or in the possession of the Alienation of immovable property. devasthanams shall be made by the committee except with the sanction of the Board.

- 42. (1) The [Provincial Government] may make rules to carry out all or any of the purposes of this Act, not inconsistent therewith.
- (2) In particular, and without prejudice to the generality of the foregoing power, they shall have power to make rules with reference to—
- (a) all matters expressly required or allowed by this Act to be prescribed;
- (b) the grant of leave and leave allowances to and payment of contributions towards the pension of the Commissioner:
- (c) the grant of travelling and halting allowances to the Commissioner;
- (d) the grant of travelling and halting allowances to the members of the committee and advisory councils;
- (e) the preparation of the budget estimates for the devasthanams;
- (f) the preparation and sanction of the estimates, and acceptance of tenders, in respect of public works and for supplies;
- (g) the convening of meetings and the transactions of business of the committee and of the advisory councils;
- (h) the audit of the accounts of the devasthanams and the particulars to be mentioned in the audit report; and
- (i) the recovery of amounts payable to auditors appointed by the [Provincial Government].
- 43. Save as otherwise expressly provided in or under this Act, nothing herein contained shall saving of established usages and customs. affect any established usage of any temple or the rights, honours, emoluments, and perquisites to which any person may, by custom or otherwise, be entitled in such temple.
- 44. (1) The Board or any other Suits. person having interest may institute a suit in the court to obtain a decree—
 - (a) vesting any property in the committee; or
- (b) declaring what portion of an endowment or of the interest therein shall be allocated to any particular object, or

- (c) removing any member of the Committee or the trustee of a specific endowment, and directing the appointment of a new member of the Committee or a new trustee for the specific endowment, or
 - (d) directing accounts and enquiries, or
- (e) granting such further or other relief as the nature of the case may require.
- (2) Sections 92 and 93 and Rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908, shall have no application to any suit claiming any relief in respect of the administration or management of the devasthanams and no suit in respect of such administration or management shall be instituted except as provided by this Act.
 - Committee to be in possession of institutions and properties.

 45. (1) The committee shall be entitled to take and be in possession of all the institutions, properties, jewels, records, and documents of the devasthanams.
- (2) If in obtaining such possession, the committee is resisted or obstructed by any person, it may make an application to the Court complaining of such resistance or obstruction, and the Court shall unless it is satisfied that the resistance or obstruction was occasioned by any person claiming in good faith to be in possession on his own account or by virtue of some right independent of that of the devasthanams, make an order that the committee be put into possession. Such order shall, subject to the result of any suit which may be filed to establish the right to the possession of the property, be final.
- 46. The costs, charges and expenses of, and incidental to, any suit, application or appeal under Costs of suit, etc. this Act shall be in the discretion of the Court, which may direct the whole or any part of such costs, charges and expenses to be met from the funds of the devasthanams, or to be borne and paid in such manner and by such persons as it thinks fit:

Provided that all costs and expenses incurred by the Board or the committee in connexion with any legal proceedings

required in the interests of the devasthanams shall be payable out of the funds of the devasthanams.

- 47. The trustee of a specific endowment attached to any temple shall perform the service or charity Duties of trustee of the committee and such orders as it may issue. Such trustee shall be in such possession of the endowment as he may be entitled to and shall also maintain and submit to the Commissioner such accounts, registers and returns as the committee may require. The accounts of a specific endowment shall be annually audited by an auditor appointed by the committee. He shall be paid such remuneration from the funds of such endowment as the committee may fix.
- 48. If any difficulty arises in giving effect to the pro-Removal of difficulties. visions of this Act, the [Provincial Government], as occasion may require, may, by order, do anything not inconsistent with this Act, which appears to them necessary for the purpose of removing the difficulty.
- Acts of Board, etc., not to be invalidated by informality, etc.

 Acts of Board, etc., not to be invalidated by informality, etc.

 Acts of Board, etc., not to be invalidated by informality, etc.

 President or member of the Board or as President or member of the committee shall be deemed to be invalid by reason only of a defect in the establishment or constitution of the Board or committee or on the ground that any member of the Board or committee was not entitled to hold or continue in such office by reason of any disqualification or by reason of any irregularity or illegality in his appointment or by reason of such act having been done or proceeding taken during the period of any vacancy in the office of President or Commissioner of the Board or
- (2) No act or proceeding of the Commissioner shall be deemed to be invalid by reason only of a defect or irregularity in his appointment or on the ground that he was not entitled to hold or continue in office by reason of any disqualification.

of President or member of the Committee.

SCHEDULE I.

LIST OF THE TIRUMALAI-TIRUPATI DEVASTHANAMS.

[Vide section 1 (2).]

I. The temple of Sri Venkateswaraswami on Tirumalai hill with the sub-temples of-

 Sri Varahaswami,
 Bhashyakarlu No. I (within the pagoda), (2)

Bedi-Hanumantharayaswami, (3)

Kshetrapalaka. (4) "

Dova Bhashyakarlu, and (5)Anjaneyaswami (in front of Sri Varahaswami). (6)

The temple of Sri Govindarajaswami at Tirupati with the sub-II. temples of-

(1) Sri Saley Nacharamma,

Choodikodutta Nacharamma, (2)

Modal Alwar, (3) "

Chakrath Alwar, ,, Madhurakavi Alwar,

Anjaneyaswami (near Dhwajasthambam), Anjanevaswami (near Pedda Bugga), (7)

Manavala Mahamuni.

(8) Nammalwar, (9) - "

Vedanta Desikulu, (10),,

Woolu Alwar, (11) (12)Tirumala Nambi. "

Tirumanga Alwar, (13) Sri Bhashyakarlu No. II,

(14)Kurath Alwar, and (15)(16)Sanjeevaroyaswami.

III. The temple of Sri Kothandaramaswami at Tirupati.

The temple of Sri Kapileswaraswami at Tirupati.

V.Sri Padmavathi's temple at Tiruchanur with the sub-temples of-

(1) Sri Krishnaswami,

Surayanarayanaswami, and

Sundararajaswami. (3)

Any other minor temple attached to any of the above temples and not specifically mentioned above.

SCHEDULE II.

List of educational institutions maintained from the funds of the Tirumalai-Tirupati Devasthanams-

Devasthanam Hindu High School, Tirupati.
 Sri Mahant Devasthanam Hindu High School, Vellore.

(3)

Venkateswara Vedapatasala, Tirupati. Venkateswara Ayurvedic College, Tirupati. (4)

Sanskrit College, Tirupati. (5)

APPENDIX VIII.

The Tanjore Chattram Endowments (Utilization) Act, 1942.

ACT No. VIII of 1942.

[3rd April, 1942.

An Act to validate the making of contributions from the funds of the Tanjore Chattram Endowments towards the maintenance of certain educational and medical institutions.

WHEREAS the Mahratta Rulers of Tanjore founded a number of chattrams on the main road to Rameswaram for the accommodation of pilgrims and created various endowments in connexion therewith:

AND WHEREAS no documents expressly defining the objects of the said endowments are now available;

AND WHEREAS the income from the said endowments has for over a century been utilized not only for feeding and otherwise helping pilgrims to Rameswaram but also for other charitable purposes such as the maintenance of schools and the distribution of medicines;

AND WHEREAS by virtue of the Madras Endowments and Escheats Regulation, 1817; the general superintendence of the said endowments was vested in the Board of Revenue;

AND WHEREAS the management and superintendence of the said endowments were transferred later to the Tanjore District Board;

AND WHEREAS contributions from the funds of the said endowments have for a long time been made by the Tanjore District Board towards the maintenance of the institutions specified in the Schedule;

AND WHEREAS doubts are entertained as regards the validity of such contributions and it is expedient to remove such doubts;

AND WHEREAS the Governor of Madras has, by a Proclamation under section 93 of the Government of India Act, 1935; assumed to himself all powers vested by or under the said Act in the Provincial Legislature;

Now, THEREFORE, in exercise of the powers so assumed to himself, the Governor is pleased to enact as follows:—

1. This Act may be called THE Short title. TANJORE CHATTRAM ENDOWMENTS (UTILIZATION) ACT, 1942.

Power to make certain contributions from

the Tanjore Chattram

Endowments.

The Tanjore District Board or such other authority 2.

> or person as may for the time being have the management and superintendence of the Tanjore Chattram Endowments may. subject to such restrictions and conditions,

if any, as may be imposed by the Provincial Government, contribute from the income derived from the

said Endowments towards the expenditure incurred in the maintenance of the institutions specified in the Schedule.

3. All contributions made before the commencement of this Act from the funds of the said Endowments towards the maintanance of the said Validation of coninstitutions shall be deemed to have been tributions already made. properly made, and the validity thereof

shall not be questioned in any Court of law.

SCHEDULE.

Educational institutions.

The Sanskrit College, Tiruvadi.

The High School, Orattanad.

The School at Rajamadam (now known as the Middle School, Raja-2. 3. madam).

4.

The Girls' School, Nidamangalam.
The Free Mahratta School, Tanjore.
The Hostel for Harijan Boys at Sreyaschatram.

Medical institutions.

The Raja Mirasdar Hospital, Tanjore.

2.

The Local Fund Dispensary, Meimisal.
The Local Fund Dispensary, Nidamangalam.
The Local Fund Dispensary, Tiruvadi.
The Local Fund Dispensary, Orattanad.
The Local Fund Dispensary, Manamelkudi. 3. 4. 5.

APPENDIX IX.

The Religious Endowments Act (XX of 1863).1

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⁽¹⁾ Short title "Religious Endowments Act, 1863". See the Indian Short Titles Act (XIV of 1897).

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- 13. Duty of trustee, etc., as to accounts; and of committee.
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- 19. Court may require accounts of trust to be filled.
- 20. Proceedings for criminal breach of trust.
- 21. Cases in which endowments are partly for religious and partly for secular purposes.
- 22. Government not to hold charge henceforth of property for support of any mosque, temple, etc.
- 23. Effect of Act in respect of Regulations therein mentioned and of buildings of antiquity, etc.
 - 24. "India."

The Act has been extended to Kanara by Bombay Act VII of 1865,

which was specially passed for that purpose. See Bom. Code.

For the Statement of Objects and Reasons of the Bill which became Act XX of 1863, see *Calcutta Gazette*, 1862, p. 573, and for Proceedings in Council relating to the Bill, see *ibid.*, Supplement, p. 28; and *ibid.*, 1863, p. 105.

³⁸ CC-0. Jangamwadi Math Collection. Digitized by eGangotri

Year.	No.	Short title.	Extent of repeal.
1863	xx	Religious Endowments Act .	Rep. in part VII of 1870; XIV of 1870; XVI of 1874; X of 1914, Repealed (Locally) as to Hindu Religious Endowments by Madras Act II of 1927. Amended Act XII of 1891; XXI of 1925; Government of India (Adaptation of Laws) Order, 1937.

[10:h March, 1863.

An Act to enable the Government to divest itself of the management of religious Endowments.

WHEREAS it is expedient to relieve the Boards of Revenue. and the Local Agents, in the Presidency of Preamble. Fort William in Bengal, and the Presidency of Fort Saint George, from the duties imposed on them by Regulation XIX of 1810, of the Bengal Code (for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples, Colleges and other purposes; for the maintenance and repair of Bridges, Sarais, Kattras and other public buildings; and for the custody and disposal of Nazul Property or Escheats), and Regulation VII, 1817, of the Madras Code (for the due appropriation of the rents and produce of lands granted for the support of Mosques, Hindu Temples and Colleges or other public purposes; for the maintenance and repair of Bridges, Choultries, or Chattrams, and other public buildings; and for the custody and disposal of Escheats), so far as those duties embrace the superintendence of lands granted for the support of Mosques or Hindu Temples and for other religious uses; the appropriation of endowments made for the maintenance of such religious establishments; the repair and preservation of buildings connected therewith, and the appointment of trustees or managers thereof; or involve any connection with the management of such religious establishments; 1[* *] It is enacted as follows:-

⁽¹⁾ The words and figures "and whereas it is expedient for that purpose to repeal so much of Regulation XIX, 1810, of the Bengal Code, and

1. [Repeal of parts of Bengal Regulation XIX of 1810 and Madras Regulations VII of 1817:]

Regulation VII, 1817 of the Madras Code, as relate to endowments for the support of Mosques, Hindu Temples or other religious purposes," were repealed by the Repealing Act, 1874 (XVI of 1874).

SEC. 1 .- The Religious Endowments Act does not apply to an endowment which is not a public one. 195 I.C. 313=22 P.L.T. 699=1941 Pat. 260. The Religious Endowments of 1863 applies not only to those endowments which were in existence at the time that Act was passed and had been taken control of by the Board of Revenue under Regulation XIX of 1810, but also to later institutions which come within its purview. 18 Pat. 417=20 Pat.L.T. 863=1940 Pat. 9. A dedication of a small plot of land te an idol is valid if made orally, and writing and registration are unnecessary. 26 N.L.R. 60=1924 N. 254. See also 3 P. 842. Public temple
—Test of. 29 C.W.N. 112=19 L.W. 253=1924 P.C. 44 (P.C.). Facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as a public temple, must be considered in their historical setting; and dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual or family. Such an inference if made from the fact of user by the public is hazardous, since it would not in general be consonant with Hindu sentiments or practice that worshippers should be turned away; and as worship generally implies offerings of some kind it is not to be expected that the managers of a private temple should in all circumstances desire to discourage popularity. The value of public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right. Where the general effect of the evidence was that a particular family have treated the temple as family property, dividing the various forms of profit whether offerings or rents, closing it so as to exclude the public from worship when marriage or other ceremonies required the attendance of the members of the family at its original home, and erecting Samadhs to the honour of its dead, it was held that it was not enough, in such a case, to deprive the family of their private property, to show that Hindus willing to worship had never been turned away or even that the deity had acquired considerable popularity among Hindus of the locality or among persons resorting to the annual mela. 67 I.A. 1=15 Luck. 1=44 C.W.N. 294=1940 P.C. 7=(1940) 1 M.L.J. 1 (P.C.). See also 1936 Lah. 344; 1938 Mad. 209. A public temple is res extra commercium, and it is not open to a private individual to acquire by prescription any private ownership in regard thereto. The character of a temple as a public temple cannot be taken away by any assertion of private rights, especially when there is no evidence that the public have ever been excluded therefrom. 1940 Mad. 208=(1939) 2 M.L.J. 867. See also 1938 Mad. 209; 1936 Lah. 744; 1941 Pat. 354=1941 P.W.N. 75=22 Pat.L.T. 239. There is no legal presumption that all property acquired by individual members of a religious fraternity belongs to the religious institution to which they are attached. Asceties and religious institutions exhibit great diversity of character and Udasis in particular conform to no single type. In any case to presume that a particular Udasi shrine followed a certain practice because on account of all religiou institutions throughout the province the practice was found to obtain in a majority of the cases is a course of reasoning unwarranted by principle or authority. 1941 A.L.J. 610=43 Bom.L.R. 998=1941 O.W.N. 970=
=1941 P.C. 56 (P.C.). The case of dedication is not made out merely by evidence of neighbourly or considerate conduct towards a religious

Repealed by the Repealing Act XIV of 1870.

institution or by showing that small profits have not been churlishly exacted by the proprietor from persons held in general esteem. 1941 P.C. 56 (P. C.); 1941 Pat. 601. The fact that a light is kept eternally burning in a building will not by itself be sufficient to convert the building into a public temple. 38 P.L.R. 289=164 I.C. 313=1936 L. 744. Where succession is proved to have always been from guru to chela, the institution must be held to be wakf. 38 P.L.R. 1052=164 I.C. 432. Public temple—Legal position of—Shebait—Powers of. 47 M. 337=51 I.A. 83=46 M.L.J. 546 (P.C.). Public trust-Inam-Devadayam-Meaning of-Inam register—Entries in—Value of. 46 M.L.J. 245. Succession—Chela—Right to succeed. 80 I.C. 496=1924 L. 170; 18 N.L.J. 120. Temple—Right of trusteeship—Usage. 19 L.W. 221=1924 M. 400 (2). See also 1935 M. 483. An ascetic who builds a temple with subscriptions collected from the public for the use of the public or the people of this locality, would not be the owner of the temple. He would only be the trustee of the temple. 14 Mys.L.J. 380=41 Mys.H.C.R. 299. Trustee-Lease for 21 years-Option to renew at enhanced rates of rent-Legality of the transaction. 19 L.W. 587=46 M.L.J. 407. Mahant—Powers of alienation—Duty of alienee—Sradh of deceased Mahant—If necessity. 5 Pat.L.T. 339=76 I.C. 68. There is no rule that, unless a person belongs to a particular (caste), he should not perform worship within a temple. Even Sudras may be pujaris. 29 C.W.N. 112=19 L.W. 253=1924 P.C. 44. With regard to hereditary offices, whether religious or secular, partition can be had of such property by means of the performance of the duties of the office and enjoyment of the emoluments by the different co-parceners in rotation. 47 B. 529. A temporary division of lands forming the emoluments of a religious office among the joint trustees is not per se objectionable, especially if it tends to convenient management. 42 M.L.J. 272=1922 M. 8. Properties dedicated to the office of Granthi of the darbar sahib are inherited by the person who succeeds to the office. But properties acquired by the Granthi descend to his natural heirs. 59 I.C. 734=1 L. 540. Where a deed of endowment prescribes a time, of succession for its management and also gives a power to alter it, the law is that if the power is given to two persons by name, the power can be exercised by both or not at all. But if power is given to two persons not by name, but as office holders, the power can be exercised even by the survivor of the two. In cases where power is given to two persons by name coupled with their description of their office, then, in order to decide whether the power can be exercised by the survivor, the Court has to gather the intention from the terms of the deed, whether the power was given as persona designata or has holders of the office and the rule set forth above, has then to be applied. I.L.R. (1940) All. 235=1940 A.L.J. 193=1940 All. 252. Mutwalliship of Mosque-Succession to-Right of females for possession claiming through females. M.L.J. 684. The law and custom of gosavis of maths is that chela wh has been declared unfit or nalayak by his guru is debarred from all interest and cut off from the guru family; there is nothing to prevent a guru from severing the spiritual connection between himself and an unfit chela. And when the presiding Mahant of a math declares a chela unfit, the latter is excluded from the family and is not entitled to claim heirship at all in any event; he is not merely postponed to a fitter chela as the immediate heir. 39 Bom.L.R. 867=1938 Bom. 23. The mere fact that in the revenue papers the Mahant is named as owner of the revenue-paying land does not amount to anything. The usual entry in the revenue papers is in the Mahant's name. 146 I.C. 432=38 P.L.R. 1052=1937 Lah. 14.

Although muth property may not vest in the Mahant as owner it is he that has the right to its possession. The property is attached to the office of mahant and none but the mahant has the right to hold the property. The property passes with the office. There is no distinction between the property and the office of the endowment. The one is attached to the other. Where the office of mahant devolves by succession, the successor not only succeeds to the office of mahant, but, by virtue of such office, he acquires the right to possession of the muth property. Although the position of a mahant is that of a manager, it does not follow that the mahant has no higher right than a mere manager. He has large powers over the property of the muth akin to those of an owner in trust. He has some interest in the muth property which on his death devolves by inheritance on his suc-1941 P.W.N. 755. Mahant—Succession to office of—Chela—Qualifications—Kanka ceremoney—When to be performed. 18 N.L.J. 120. Mahanth—Powers of alienation—Permanent lease, power to grant. See 17 Pat. 594=1938 Pat. 613; 41 Bom.L.R. 1317; 18 Mys.L.J. 429; 1936 Cal. 256=64 C.L.J. 65; 63 Cal. 1054; 63 C.L.J. 22 (mortgage). Recovery of endowment property improperly alienated by shebait-Procedure. See 1938 Pat. 394. Where the testator dedicated the house in the first instance in the name and honour of his family deity and provided that his Vamsa-thar were to live in the house and arranged for the performance of various festivals and charities, held, the provisions did not offend the rule against perpetuities and that more than one object of bounty in themselves could not go to defeat the trust, so long as they did not conflict with each other; further, the persons who were entitled to be trustees or managers of the trust were sufficiently indicated; they had to be in the line of the founder's heirs and willing to take up the duties imposed by the trust. 8 Mys.L.J. 351. An alienation of a religious office, such as that of an archakaship of a temple, is not invalid when it is made in favour of one in the line of the alienor's heirs, and when it is neither for consideration, nor in any way opposed to or inconsistent with the interests of the institution. The right of delegation has been expressly recognised in the case of archakas by permitting the system of proxies. Consequently, a devise by will of the archakaship to the testator's sister's son who is not in any way personally unfit or disqualified from performing the duties of the office, is valid. 1935 M. 220= 68 M.L.J. 295. See also 55 L.W. 303=(1942) 1 M.L.J. 564. ment-Village temple-Villagers allowing archakas to manage property of temple for some years—If lose right of management. See 1941 Mad. 312 = (1940) 1 M.L.J. 935. See also (1939) 2 M.L.J. 867=1940 Mad. 208. As to alienation of hereditary archaka right, see 40 L.W. 799=67 M.L.J. 759. A trustee cannot delegate his trusteeship to a stranger. But that principle does not apply to case where all the trustees of a religious endowment, fifty in number, in order to facilitate management, authorise a Committee of five of the trustees to look after the management of the temple. Such a delegation of the power of management is not invalid; and a suit by such a Committee on behalf of the endowment is maintainable, even if the other trustees are not impleaded, especially when the plaintiffs have obtained permission to sud on behalf of all the trustees. 40 L.W. 540=1934 M. 672. An agreement by a mahant of an Udasi institution under which he hands over the management of a strictly Udasi institution, to a committee, the majority of which are Sikhs belonging to a different sect, is null and void and not enforceable. 41 P.L.R. 777=1939 Lah. 239. A transfer of the office of trustee of a temple for a monetary consideration is opposed to public policy and cannot be recognised as being in accordance with law. 1938 Mad. 713=(1938) 1 M.L.J. 517. Trustee—Duty of—Temple 2. In this Act¹ * * * * * * * the words "Civil Court" and "Court" shall ¹[save as pro-

(1) The words "words importing the singular number shall include the plural, and words importing the plural number shall include the singular; words importing the masculine gender shall include females"; were omitted by Act X of 1914, Sch. II. The words "save as provided by S. 10" were inserted by Act XXI of 1925. See 37 M.L.J. 162.

committee directing trustee to perform temple festival at fixed amount—Trustee notifying that amount inadequate—Festival conducted on grand scale and at expense exceeding sanctioned amount-If guilty of brach of trust-Trustee submitting accounts immediately-Committee acquiescing and making no complaint—Right to sue for recovery of excess amount spent by trustee.
46 L.W. 782=1937 M. 970=(1937) 2 M.L.J. 660. An alienation or relinquishment of the office of trustee of a religious endowment in favour of a person who is not the next heir would be invalid as contravening the intention of the founder if there is a deed which says that the office should be enjoyed by a trustee and his heirs. An alienation of the office of trustee. in order to be valid, must be in favour of the immediate heir. An aliena-nation or release or relinquishment of an office of trustee not for value in favour of the next or immediate heir would be valid; otherwise, it is invalid, even though the person in whose favour it is alienated or released or relinquished is in the line of heirs, e.g., a brother. 53 L.W. 290=1941 Mad. 552=(1941) 1 M.L.J. 510. Temple—Archaka miras right—Removal of idol from principal shrine to new shrine-Right of old archakas to mirasi rights in new shrine. 1935 M. 220=68 M.L.J. 295. Respective rights of temple archakas and kavalgars in offering made to temple. See 1937 M.W.N. 975. Obiter—A person without legal right, but in actual possession of a mutt or any other endowment is entitled to maintain a suit for recovery of possession appertaining to it, not for his own benefit, but for the benefit, of the mutt or endowment. [19 C. 776; 1927 C. 130, Not foll. 12 P. 351 and 57 A. 159 (P.C.) Rel. on.] 1935 C. 623. A Civil Court has no authority and is not entitled to disqualify a mahant or remove him from his position because of his bad behaviour, but the Civil Court is entitled to ous a malant who has been declared disqualified by authority. 173 I.C. 113=39 Bom.L.R. 867=1938 Bom. 23. Religious procession—Right to conduct—Nature and limits of such right. In India there is a right to conduct a religious procession with its 'appropriate observances' through a public street provided it does not interfere with the right of the public to use such street. A civil suit for its enforcement against those who interfere with the exercise of the right is maintainable. It is necessarily a question of fact in each case to what constitutes an "appropriate observance" in this connection. I.L.R. (1939) All. 237=1939 A.L.J. 19=1939 All. 280. Right to conduct in public streets and before mosques-Limitations to exercise of such right. The law is well settled that any community can use a public street for processions attended with music, provided that they do not thereby cause a disturbance to any other community when assembled for prayer or wor-Where a decree entitled the Hindus to take processions through the public streets with music, etc., "except during the house of public congrega-tional worship in the mosque," it was held, that the exception introduced was a proper one, but that it should have been limited to the neighbourhood of the mosque prescribing a certain radius with the mosque as the centre, within which area there should be no music during the prescribed time. Held, further, that though the prohibition of music before a mosque at all times, vided in section 10] mean the principal "Court" and Court of original civil jurisdiction in the district in which ¹[or any other Court empowered in that behalf by the Provincial Government] within the local limits of the jurisdiction of which the mosque, temple or establishment is situate, relating to which or to the endowment whereof, any suit shall be instituted or application made under the provisions of this Act.

3. In the case of every mosque, temple or other religious establishment to which the provisions of either of the Regulations specified in ²[the preamble to this Act] are applicable, and nomination of the trustee, manager or

(1) Inserted by Act XXI of 1925.
(2) These words were substituted for the word and figure "section 1" by the Repealing and Amending Act XII of 1891.

may be a practical solution of the ever recurring disputes between the two communities, it is not possible to give a judicial imprimatur to such a solution, as it would be inconsistent with the existing state of the law. 47 L. W. 683=1938 Mad. 305=(1938) 2 M.L.J. 165.

SECS. 1 AND 3 .- A compromise by the manager of the Court of Wards, in whose hands the management of the idol's property is placed which is not for the benefit of the idol, is bad. 22 P.L.T. 699=1941 Pat. 260. The scheme of the Act in so far as religious institutions in the Madras Presidency are concerned, is that, in all cases where Regulation VII of 1817 applied, or in cases where the appointment of trustee was either made by the Government of Madras or one of its officers, or where the confirmation of such appointment had to be made by Government or by its officers, such powers were transferred to Temple Committees, and that in all other cases, property which was subject to the endowment was transferred to the then legally entitled trustee, and the Board of Revenue had no other control over such property. In order, therefore, to give jurisdiction to Temple Committees over a temple, they must show that the case falls under S. 3. Where it is found that the Board of Revenue in Madras never exercised any control over a religious endowment in the Madras Presidency, nor was the power of appointment of trustee, manager, or superintendent vested in, or exercised by the Government of Madras or by any public officer under the Government of Madras, the Temple Committee appointed under this Act has no right or control over such a religious endowment. The words "public officer" in S. 3 mean public officer under the Government of Madras in so far as religious institutions in the Madras Presidency are concerned, and not a public officer anywhere, even outside British India, or public officer outside the control of the Government of Madras. 30 L.W. 509=57 M.L.J. 448. It is within the power of a mahant to make a compromise creating an interest in the property beyond his own lifetime, where such compromise is for the benefit of the estate. In determining whether a compromise is for the benefit of the estate, the test is whether the compromise was in fact concluded

superintendent thereof, at the time of the passing of this Act, is vested in, or may be exercised by, the Government or any public officer, or in which the nomination of such trustee, manager or superintendent shall be subject to the confirmation of the Government or any public officer, the Provincial Government shall, as soon as possible after the passing of this Act, make special provision as hereinafter provided.

4. In the case of every such mosque, temple or other religious establishment which, at the time of the passing of this Act, shall be under the management of any trustee, manager or superintendent, whose nomination shall not vest in, nor be exercised by, nor be subject to the con-

firmation of the Government or any public officer, the Provin-

with the object of saving the estate from unnecessary loss. 1934 L. 964. Where there is no deed of endowment or where it is ambiguous, usage is relevant evidence to determine whether the lands and income were after their acquisition endowed for the math or were only burdened with the actual expenses thereof, the surplus being held by the mahant for his own benefit. (53 M. 608, Rel. on.) 15 L. 732=1934 L. 421. Public officer, meaning of, see 57 M.L.J. 448.

SECS. 3 AND 4.—A Temple Committee constituted under the Act can appoint a trustee temporarily. 61 I.C. 783=18 L.W. 153. Endowments under the control of Committee. 40 C. 323=16 I.C. 908=17 C.L.J. 183. Though a temple may be subject to the control and superintendence of a Temple Committee, that fact does not give the Committee any right of supervision over the Kattalai which is an independent trust. 16 L.W. 340=1923 M. 209. Section transfers powers of Board of Revenue to the Temple Committee. Sec 1 I.A. 209; 39 M. 700; 21 M. 179; 12 B. 247. Committee must prove that the right of appointing trustee vested in it. 28 I.C. 833=2 L.W. 371. Temple Committee has power to appoint additional trustee: 58 I.C. 566=1915 M.W.N. 280. A private religious endowment by a family can only be converted into secular property, if at all, by the consensus of the whole family; this can only be done with the consent of all the male and female relations of the founder interested in the endowment. 157 I.C. 181=1935 M. 483. A religious institution, such as a temple, may be endowed by a person of any caste, and yet there can be a custom existing in that institution in favour of the opponents of the founder of the temple and against the members of the community or family of the founder, and restricting the entry by the members of his caste into the sanctum of the temple. Such customs do exist and have been judicially recognised. There is nothing unreasonable or obnoxious in such customs. 37 Bom.L.R. 584. Temple—Devasthanam—Scheme—Construction—Power of trustee "to fine, suspend, reduce or remove servant"—If confers power of summary dismissal. 69 M.L.J. 206.

SECS. 3 AND 14.—A Temple Committee has power to frame rule for the guidance of trustee. The rules should not reduce the trustee to the position of a servant of the Committee. 38 I.C. 695—5 L.W. 672. A temple of

cial Government shall, as soon as possible after the passing of this Act, transfer to such trustee, manager or superintendent, all the landed or other property which; at the time of the passing of this Act, shall be under the superintendence or in the possession of the Board of Revenue or any local agent, and belonging to such mosque, temple or other religious establishment, except such property as is hereinafter provided;

and the powers and responsibilties of the Board of Revenue, and the local agents, in respect to such mosque, temple or other religious establishment, and to all land and other property so transferred, except as regards acts done and liabilities incurred by the said Board of Revenue or any local agent, previous to such transfer, shall cease and determine.

5. Whenever from any cause a vacancy shall occur in the office of any trustee, manager or superintendent, to whom any property shall have been transferreed under the last proceding section, and any dispute shall arise respect-

ing the right of succession to such office, it shall be lawful for any person interested in the mosque, temple or religious establishment to which such property shall belong; or in the performance of the worship or of the service thereof, or the trusts relating thereto, to apply to the Civil Court to appoint a manager of such mosque, temple or other religious establishment, and thereupon such Court may appoint such manager to act until some other person shall by suit have established his right of succession to such office.

The manager so appointed by the Civil Court shall have and shall exercise all the powers which, under this or any other Act, the former trustee, manager or superintendent, in whose

which one of the trustee is a hereditary trustee and the other trustees are appointed by the Committee comes under S. 3. 39 M. 700=30 M.L.J. 29. Sec. 5.—Temporary manager—Court when can appoint. 43 A. 50. S. 5 only applies where there is a vacancy existing at the time the application is made. 1935 A.L.J. 311=1935 A. 273. A decree under S. 5 of the Act does not bar a suit under S. 92 of the C.P. Code. 63 I.A. 418. The

place such manager is appointed by the Court, had or could exercise in relation to such mosque, temple or religious establishment, or the property belonging thereto.

6. The rights, powers and responsibilities of every

trustee, manager or superintendent, to whom Rights, etc., of trusthe land and other property of any mosque. tees to whom property temple or other religious establishment is is transferred under section 4. transferred in the manner prescribed in section 4 of this Act, as well as the conditions of their appointment, election and removal, shall be the same as if this Act had not been passed, except in respect of the liability to be sued under this Act, and except in respect of the authority of the Board of Revenue and local agents, given by the Regulations hereby repealed, over such mosque, temple or religious establishment, and over such trustee, manager or superintendent.

All the powers which might be exercised by any Board or local agent for the recovery of the rent of Appointment of com- land or other property transferred under the said section 4 of this Act, may, from the date of such transfer, be exercised by any trustee, manager or superintendent to whom such transfer is made.

which authority is hereby determined and repealed.

7. In all cases described in section 3 of this Act the · Provincial Government shall once for all ¹appoint one or more committees in every duties of committees. division or district to take the place, and to exercise the powers, of the Board of Revenue and the local agents under the Regulations hereby repealed.

⁽¹⁾ For Committees appointed in-

Ajmer-Merwara, see Aj. R. & O., Vol. I.
 Madras, see Mad. R. & O., Vol. I.

committee cannot dismiss a dharmakartha for not voluntarily rendering accounts or failure to voluntarily furnish sceurity or mere absence from the temple locality. 18 I.C. 58=24 M.L.J. 358. An order passed on an applition under S. 5 is not a decree and therefore no appeal lies against such 43 A. 55.

SEC. 7: COMMITTEE APPOINTED UNDER-DEATH OF ONE MEMBER PEND-ING SUIT-SUIT MAY BE CONTINUED BY OTHERS .- A Committee appointed by the Government under S. 7 is not ipso facto dissolved on the death of one of its members pending the suit, and the suit can be continued by the surviving members of the Committee. 61 C. 80=38 C.W.N. 214.

Such committee shall consist of three or more persons, and shall perform all the duties imposed on such Board and local agents, except in respect of any property which is specially provided for under section 21 of this Act.

Qualifications of for the purposes of which the mosque, temple or other religious establishment was foundanced or is now maintained, and in accordance, so far as can be ascertained, with the general wishes of those who are interested in the maintenance of such mosque, temple or other religious establishment.

The appointment of the committee shall be notified in the Official Gazette.

COMMITTEE-Powers of .- Under the Act of 1863, the Committee appointed under S. 7 was to have the same powers that the Board of Revenue had under Regulation XIX of 1810, the powers being of supervision and control. The power to suspend or remove a mutawalli for just cause, which was properly incident to the principal duties and responsibilities of the Board of Revenue under Regulation XIX of 1810 was impliedly given to the Committee. The trustee, manager or superintendent of the religious establishment appointed by the Committee, has no possession strictly so-called. The property is vested in the Committee, and the manager is only an agent or servant of the Committee. The Committee can always under the law take over such custody or management from the manager, provided they act in the interest of the institution. (1) The powers of the Committee appoint-ed under Act XX of 1863 are not the powers exercisable under the general Mahomedan Law in the matter of appointment of mutwallis and not the powers exercised by the creator of the endowment itself, but the power vested in the Ruling power, the power exercised by the Board of Revenue under Regulation XIX of 1810 and the powers conferred upon the Committee under the Act of 1863. The mutawalli appointed under the Regulation has no power to appoint his successors and that was the scheme followed by the Board of Revenue in supersession of the general rule of Mahomedan Law. The Committee has the power vested in them under the law to decide the duration of tenure of a mutwalli and the conditions of service, and regard being had to the past history of the institution their decision to appoint a mutwalli for a term and subject to good behaviour is bona fide and in the interests of the institution. (2) The position of a mutwalli appointed by the Committee is that of a servant of the Committee; he has no freehold in his office. He is not a mutwalli under the endowment or under the general Mahomedan Law. (3) The onus would be on the defendant to show that his dismissal was actuated by improper motives. 61 C. 80=38 C.W.N. 214 =1934 C. 328. A Committee constituted under Act XX of 1863 have all the powers which the Revenue Board had under Regulation VII of 1817, and in general terms their powers can be described as powers of superintendence. 1937 M. 327=46 L.W. 695=(1937) 2 M.L.J. 477. It may take all steps which may seem to them reasonably necessary for the due preservation of the

In order to ascertain the general wishes of such persons in respect of such appointment, the Provincial Government may cause an election to be held, under such 'rules (not inconsistent with the provisions of this Act) as shall be framed by such Provincial Government.

Tenure of office,

9. Every member of a committee appointed as above shall hold his office for life, unless removed for misconduct or unfitness;

Removal.

and no such member shall be removed except by an order of the Civil Court as hereinafter provided.

10. Whenever any vacancy shall occur among the

(1) For rules made under S. 8 for Madras, see Mad. R. & O., Vol. I.

properties of the temple and the only limitation to be imposed upon their powers is that they should not unnecessarily interfere with anything that may be described as the existing management. The management of the temple is prima facie in the dharmakarthas and the Committee ought not to exercise their powers arbitrarily nor reduce them to the position of servants nor interfere with the internal affairs of the temple. (1937) 2 M.L.J. 477. The Committee has also power to appoint overseers to be in joint possession and custody of temple jewels and other movables of the temple along with the trustees and may also appoint additional trustees without bringing any charge against the existing trustees. (1937) 2 M.L.J. 477. A trustee of a kattalai or a minor endowment can be removed only by the Court and in properly instituted suit. 150 I.C. 156=39 L.W. 513=1934 M. 381.

SECS. 7 AND 12.—The powers of a Committee are not suspended by

SECS. 7 AND 12.—The powers of a Committee are not suspended by the occurrence of a vacancy among its members. 39 M. 700=30 M.L.J. 29. The Committee under S. 7 is a corporation having a legal entity and is similar in all respects to every other corporation. If one member is dead, the survivors can act until another is appointed. 1 Pat.L.J. 437=38 I.C. 13. See also 61 C. 80=38 C.W.N. 214=1934 C. 328. Originally subject to the Committee of one taluk—Lands assigned to another taluk in revenue redistribution—Former Committee to have jurisdiction. 39 M. 949=31 M. L.J. 360.

SECS. 8 AND 9.—If a District Judge appoints, against the clear intention of the Act under S. 8, an improper and unfit person by reason of his religious qualifications or moral conduct, such person could be removed by proceedings equivalent to proceedings by *Quo warranto in England*. 29 M. L.J. 671. On this section, see also 40 M. 793 (P.C.), under S. 10.

SEC. 10.—Where on the occurrence of a vacancy in a Temple Committee the remaining members of the Committee have failed to fill it by holding an election as provided by S. 10 and they have been ordered to fill up the vacancy forthwith, they must themselves make the appointment. The Civil Court has no power, after expiration of the said three months, to

Vacancies to be members of a committee appointed as above, filled.

a new member shall be elected to fill the vacancy by the persons interested as above provided.

Procedure.

Procedure.

S possible give public notice of such vacancy, and shall fix a day, which shall not be later than three months from the date of such vacancy, for an election of a new member by the persons interested as above provided, under 'rules for elections which shall be framed by the Provincial Government;

and whoever shall be then elected, under the said rules, shall be a member of the committee to fill such vacancy.

If any vacancy as aforesaid shall not be filled up by such election as aforesaid within three months

When Court may after it has occurred, the Civil Court, on the application of any person whatever, may appoint a person to fill the vacancy or may order that the vacancy

⁽¹⁾ For rules under S. 10 for the U.P., see U.P. List of R. & O., Vol. I.

direct the remaining members of the Committee to fill up the vacancy by election or to validate the appointment of the person so elected. If the Court does so, the order is without jurisdiction and is open to revision by the High Court. 40 M. 793=44 I.A. 261=33 M.L.J. 69 (P.C.) (On appeal from 38 M. 594). Where "the remaining members" of a committee are ordered by the District Court to fill up a vacancy in the Committee under S. 10 it is not necessary for all of them to be unanimous in their selection of a candidate. The duty of filling up the vacancy is conferred upon them as a body; and therefore the ordinary rule that the opinion of the majority suffices would prevail. The very wording of S. 10 shows that the remaining members are not the Committee, they are a select body given statutory powers under the section to fill up the existing vacancy. The nature of that body is very similar to that of a corporation with one sole object and power. Their power is an alternative power and once the District Judge fails to exercise his power to fill the vacancy the other provision in S. 10 operates, under which the remaining members of the Committee are empowered to fill up the vacancy. They are not specified persons but such members of the Committee as are still alive. An appointment of a member by the majority only is a valid appointment, and cannot be set aside by the District Judge. Having referred the matter to the surviving members, he cannot express dissatisfaction with their choice and attempt to override their decision and avoid it. 1937 Mad. 597=(1938) 1 M.L.J. 386. Neither R. 94 of the Madras Civil Rules of Practice nor S. 41, C.P.C., has application to proceedings under S. 10 by the District-Court for the appointment of a Committee member. 29 M.L.J. 671. Committee of management—Death of one member—Suit to compel others to hold election in

etc.

be forthwith filled up by the remaining members of the committee, with which order it shall then be the duty of such remaining members to comply; and, if this order be not complied with, the Civil Court may appoint a member to fill the said vacancy.

¹[Explanation.—In this section "Civil Court" means the principal Court of original civil jurisdiction in the district in which the mosques, temples or religious establishments for which the committee has been appointed or any of them are situate. 1

11. No member of a committee appointed under this Act shall be capable of being, or shall act, also as a trustee, manager or superintendent of No member of comthe mosque, temple or other religious estamittee to be also trustee, etc., of mosque, blishment for the management of which such committee shall have been appointed.

12. Immediately on the appointment of a committee as above provided for the superintendence of any such mosque, temple or religious esta-On appointment of committee, Board and blishment, and for the management of its local agents to transfer property. affairs, the Board of Revenue, or the local

pursuance thereof. Application to set aside election. 92 I.C. 902. REVIEW.—There being no explicit provision in the Act for a review, a District Judge has no power to review an order passed by him under S. 10;

nor has he any inherent power to do so. 37 M.L.J. 162 (40 C. 552; 33 M.

65; 22 C. 419, Rel.).

SEC. 11 .- The members of a Temple Committee are not trustees; but if they usurp the trustee's functions, they become liable as trustees de son tort for all acts of breach of trust. 23 M.L.J. 278. If a managing committee appointed by Court in respect of a debutter estate executes repairs without any reference to the Court, it would be open to the Court to overlook the fact that sanction for incurring the costs had not been previously asked for, and the Court may properly sanction the payment of costs which had been actually incurred on being satisfied that the repairs done were really necessary. 43 C.W.N. 435.

SEO. 12.—There is no warrant for holding that the Madras Hindu Devasthanam Committeee can only appoint trustees for life. The committee has an unfettered discretion, subject to the special conditions of a particular endowment to make an appointment for a term of years. If it considers that it is better in the interests of a particular trust that an appointment for life should not be made, the committee has in the absence of some overriding factor, the right of making the appointment for a term of years.

⁽¹⁾ This explanation was inserted by Act XXI of 1925.

agents acting under the authority of the said Board, shall transfer to such committee all landed or other property which at the time of appointment shall be under the superintendence, or in the possession of the said Board or local agents, and belonging to the said religious establishment, except as is hereinafter provided for,

and thereupon the powers and responsibilities of the Board and the local agents, in respect to such mosque, temple or religious establishment and to all land and other property so agents.

regards acts done and liabilities incurred by the said Board or agents previous to such transfer, shall cease and determine.

All the powers which might be exercised by any Board or local agent for the recovery of the rent of land or other property transferred under this section may from the date of such transfer be exercised by such committee to whom such transfer is made.

13. It shall be the duty of every trustee, manager and superintendent of a mosque, temple or religious establishment to which the provisions of this Act shall apply to keep regular accounts of his receipts and disbursements in respect of the endowments and expenses of such mosque, temple or other religious establishment;

and it shall be the duty of every committee of management, appointed or acting under the authority of this Act, to require from every trustee,

SECS. 12 AND 13.—A Devasthauam Committee has no power to interfere with the acts of the temple trustee in a question of purely temporal honours to definite persons. An archaka of a temple is bound to obey the orders

So far as Madras is concerned, it must be held that a trustee is not a servant of the committee. I.L.R. (1941) Mad. 942=1941 Mad. 546=(1941) 2 M. L.J. 35 (F.B.). A trustee is not a mere servant of the Devasthanam Committee which appoint him; nor is he liable to be dismissed at the committee's will and pleasure. A trustee can only be dismissed on good and sufficient grounds and after an enquiry into the facts and a dismissal which is not justified may be set aside by the Courts of law. See 52 L.W. 185=1940 Mad. 823=(1940) 2 M.L.J. 5; 1939 Mad. 346=(1939) 1 M. L.J. 9.

manager and superintendent of such mosque, temple or other religious establishment, the production of such regular accounts of such receipts and disbursements at least once in every year; and every such committee of management shall themselves keep such accounts thereof.

14 Any person or persons interested in any mosque, temple or religious establishment, or in the performance of the worship or of the service Persons interested may singly sue in case of breach of trust, etc. thereof, or the trusts relating thereto, may, without joining as plaintiff any of the other

persons interested therein, sue before the Civil Court the trustee, manager or superintendent of such mosque, temple or religious establishment or the member of any committee appointed under this Act, for any misfeasance, breach of trust or neglect of duty, committed by such trustee, manager, superintendent or member of such committee, in respect of the trusts vested in, or confided to them respectively;

of the trustee and not those of the Committee in those matters. 54 I.C. 281 =10 L.W. 616.

SECS. 13 AND 14.—Held, (1) that under S. 13 of the Act it is the duty of the trustees to keep accounts of receipts and disbursements and it is the duty of the committee to require production of the accounts at least once a year. Only if his conduct amounts to misfeasance, breach of trust or neglect of duty as mentioned in S. 14 of the Act could the Civil Court be empowered to dismiss the trustee. The Committee could not have greater powers than the Court has in regard to the matter. The trustee is not a clerk or a servant of the Committee to be dealt with in any way at their pleasure. The acts complained of by the committee would not amount to neglect of duty, if the acts of neglect are not of the same seriousness as misfeasance or breach of trust. The committee could not without jurisdiction dismiss the trustee from office; (2) that without proper enquiry into the matter, that is, without charges being framed and opportunity for explanation being given the trustee to meet the charges, the dismissal would be invalid; (3) notice of the meeting at which enquiry will have to take place should set out the subjects of enquiry in the agenda; (4) it is irregular and opposed to natural justice to dismiss the trustee without the necessary requirements of an enquiry; (5) the trustee though appointed interim, has what might be called a freehold in his possession, where his appointment is up to the event of a permanent holder of the office being found; and until that event occur he is entitled to hold office of a trustee; (6) where the dismissal of the interim trustee was irregular and invalid, it would follow that the committee has no power to appoint any fresh person in his place. 184 I.C. 378=1939 Mad. 346=(1939) I M.L.J. 9; see also (1941) I M.L.J. 35.

SEC. 14.—S. 14 applies where the object is to protect the endowment against misfeasance, breach of trust or neglect of duty. The Act applies to all trusts whether established prior to 1863 or after. 4 P. 741=88 I.C. 1035=1925 P. 544. The provisions of S. 14 are not applicable to temples

and the Civil Court may direct the specific performance of

Powers of Civil any act by such trustee, manager, superintendent or member of a committee,

and may decree damages and costs against such trustee, manager, superintendent or member of a committee,

and may also direct the removal of such trustee, manager, superintendent or member of a committee.

15. The interest required in order to entitle a person

for the maintenance of which no endowment has been made. 137 I.C. 42= 1932 O. 152 (F.B.). In a suit under section 14 the Court has not to pass any order against a person who is alleged to have intruded into management without authority, but the only question to be considered is whether a person in whom property has vested should be removed for misfeasance or malfeasance, etc. A suit under the section can lie only against those persons in whom the property has been vested or to whom certain funds are confided. No suit can lie against a person who is a mere trespasser. I.L.R. (1938) Bom. 362=40 Bom.L.R. 365=1938 Bom. 311. The words "appointed under this Act'' in S. 14 only refer to the committee and not to the trustee manager or superintendent. 38 C.W.N. 1056=1934 C. 741. But see 1935 A. 273, infra. The words "appointed under this Act XX of 1863 apply not only to the members of the Committee? but also to the words "trustee, manager or superintendent." 1935 A.L.J. 311=1935 A. 273. Suit under S. 14 is a representative suit. 1928 M. 614 (41 M. 237, Foll.); 7 Pat.L. T. 4. Suit for declaration of the invalidity of a resolution of a Committee would lie in a Civil Court. 91 I.C. 352=1926 C. 583. In a suit for removal of a trustee under S. 14 the only avoiding for the decide in if the of a trustee under S. 14, the only question for the Court to decide is, if the trustee has been guilty of any misfeasance, breach of trust or neglect of duty. 89 I.C. 429. Lease by mutwalli—Suit by worshipper to declare invalidity of, is not within the section. 49 I.C. 355=23 C.W.N. 115. See also 52 M.L.J. 541. Position of mutawalli discussed. 58 C.L.J. 356=150 I.C. 124=1934 C. 348. A suit was brought under S. 14 against the sole surviving member of a Committee appointed under S. 3 for his removal for neglect of duty. Held, that the relief claimed was purely personal, and the cause of action did not survive against his heir on his death pending the litigation. 40 C. 323=16 I.C. 908=17 C.L.J. 183. The words in S. 14 "any mosque" must necessarily mean not only mosques which were in existence in 1863 but mosques which are now in existence. 124 I.C. 710 (2)=1930 A. 577 (1). Where lands are granted for a service to be performed, viz., the upkeep of a mosque and its buildings and the performance of religious services therein the grantce or his descendants need not strictly account for the disposal of the income of the lands so long as the services are performed properly. 42 M.L.J. 272=1922 M. S. Misfeasance and breach of trust—Error of judgment not sufficient—Alleged division of funds of endowment—Proof of detriment to funds of endowment necessary. See 58 C.L.J. 356=1934 C. 348. Where the sajjadanashin chooses not to produce his full accounts, unless the failure is explained away, he would be removed from his office. 443.

SECS. 14 AND 15.—A Temple Committee has the power of suspending or dismissing a temple trustee for sufficient cause, but the power must be exer-

to sue under the last preceding section need not be a pecuniary, or a direct or immediate. Nature of interest entitling person to sue. interest or such an interest as would entitle the person suing to take any part in the management or superintendence of the trusts.

Any person having a right of attendance, or having been in the habit of attending, at the performance of the worship or service of any mosque, temple or religious establishment, or of partaking in the benefit of any distribution of alms, shall be deemed to be a person interested within the meaning of the last preceding section.

16. In any suit or proceeding instituted under this Act it shall be lawful for the Court before which Reference to arbitsuch suit or proceeding is pending to order any matter in difference in such suit to be referred for decision to one or more arbitrators.

Whenever any such order shall be made, the provisions of ¹[Chapter IV of the Arbitration Act, 1940] shall in all respects apply to such order and arbitration, in the same manner as if such order had been made on the application of the parties under 2[section 21 of the said Act].

(2) Substituted by Act X of 1940.

⁽¹⁾ Substituted for the words "Chapter VI of the Code of Civil Procedure" by Act X of 1940.

cised at a meeting of the members of the Committee duly convened. 41 M. 357=33 M.L.J. 660. Reliefs that can be given under this section: see 48 A. 158=24 A.L.J. 21=1926 A. 308. Duty of Court in a suit for removal of trustee: see 1926 L. 16.

APEAL.—Appeal from order refusing leave to suc—No appeal lies. 1925

P. 138.

SECS. 14 AND 18 .- All that is necessary in order to attract the provisions of S. 14 and S. 18 of the Act of 1863 is to show that the endowment is of a nature that the superintendence of it could vest in the Board of Revenue under Regulation XIX of 1810 if it were in force. As the preamble of that Regulation stated that when endowments had been granted in land by an individual for the support of a Hindu temple, such endowments were to be considered as for public purposes to which the Regulation would be applicable, the Act of 1863 would equally be applicable to them. 11 P. 594=1932 P. 177. Where an office of the mutawalli of a wakf falls vacant, the District Judge is entitled under proper circumstances to make an appointment to fill the vacancy but he has no general power to remove a mutawalli in miscellaneous proceedings on an application by one of the beneficiaries, his power in this respect being limited and defined by Ss. 18 and 14, Religious Endowments Act, 1863 and S. 92, C.P. Code; nor has the power in such proceed-

17. Nothing in the last preceding section shall prevent the parties from applying to the Court, or the Court from making the order of refer-Reference under arbitration Act, 1940. ence, under the said 1[section 21 of the Arbitration Act, 1940].

No suit shall be entertained under this Act without a preliminary application being first made to the Court for leave to institute such suit. Application for leave to institute suits.

ings to require the mutwali of a private endorsement to render account. 19 Pat.L.T. 934=1938 Pat. 537. The words "any mosque, Trustee or religious endowment" in S. 14 mean a mosque, temple or religious endowment to which the provisions of Regulation XIX of 1810, would have applied if they were in force now, and therefore include religious endowments of a publie character which came into existence, not only before 1863 but also after wards. Leave can therefore be granted under S. 18 of the Act to sue the mutwalli of a wafk which is created after 1863. 38 C.W.N. 1056=1934 C. 741. Where the object of a dharmasala is that Granth should be read daily and no member of the Sikh community behaving properly can be excluded and where the Granth is to be remunerated partly at least from Government grants, it is a public institution. 17 I.C. 270=216 P.L.R. 1912. So a suit for the removal of the manager must have sanction according to S. 18. 17 I.C. 270. A suit for the removal of a trustee may be instituted with the leave of the Court. 9 I.C. 168=21 M.L.J. 450. A suit instituted by four persons under S. 14, with leave of Court under S. 18, does not abate by reason of death of one of the plaintiffs during the pendency of such suit. 41 M. 237=33 M.L.J. 173, it being a representative suit. 1928 M. Suit for removal of trustees of wakf requires sanction of the Advocate-General and not leave of Court under S. 18 of Act. 35 I.C. 880. Leave to sue under S. 18 should not be granted on the basis of vague and indefinite allegations, nor should sanction be given against all or any of the respondents without specifically mentioning the party against whom the right to sue is sanctioned. 1924 M. 644. Where sanction is given to two persons, one of them alone cannot sue without getting the sanction amended, the sanction being a condition precedent and the object of requiring sanction being to protect managers from vexatious suits. 38 M. 1192=26 I.C. 208= 27 M.L.J. 24. So far as pleaders are concerned, the control over them is vested in the Court to suspend them or strike them off the rolls, and if a man has really repented, the Court has always the right to restore the man to the profession. But the question of repentance has nothing to do with the interpretation of a clause in a scheme framed by Court for management of a temple which provides that a person guilty of a non-compoundable offence involving moral turpitude would be disqualified to stand for the election of trusteeship. 1939 M.W.N. 1009=1939 Mad. 605.

SEC. 18.—Plaintiff can proceed either under S. 18 of this Act or S. 92, C.P. Code. 1934 P. 443. Where the founder has divested himself completely of his interest in the property and transferred it in favour of the

Substituted by Act X of 1940.
 The words "the application may be made upon unstamped paper" were repealed by Act VII of 1870.

The Court, on the perusal of the application, shall determine whether there are sufficient *prima facie* grounds for the institution of a suit, and, if in the judgment of the Court there are such grounds, leave shall be given for its institution.

1[* * *].

If the Court shall be of opinion that the suit has been for the benefit of the trust and that no party to the costs.

Suit is in fault, the Court may order the costs or such portion as it may consider just to be paid out of the estate.

19. Before giving leave for institution of a suit, or, after leave has been given, before any proceeding is taken, or at any time when the suit is pending, the Court may order the trustee, manager or superintendent, or any member of a committee, as the case may be, to file in Court the accounts of the trust, or such part threof as to the Court may seem necessary.

Proceedings for criminal breach of trust. shall in any way affect or interfere with any proceeding in a Criminal Court for criminal breach of trust.

Cases in which endowments are partly for religious and partly or secular purposes,

21. In any case, in which any land or other property has been granted for the support of an establishment partly of a religious and partly of a secular character,

(1) Omitted by Act VII of 1870.

temple and for the maintenance of the images therein the protection of the endowment according to the Hindu Law ultimately vests in the Crown, and as such it must be treated to be of a public nature. 11 P. 594=13 P.L.T. 256=1932 P. 177. S. 18 does not require any elaborate inquiry; if there are sufficient prima facie grounds, the Judge is justified in "granting leave". 124 I.C. 719 (2)=1930 A. 577 (1). A suit by a temple trustee to recover the amount due by defendant under the terms of the trust cannot be maintained without leave, as the suit is not exempt from S. 92, C.P. Code or S. 18 of this Act. 62 I.C. 911=14 L.W. 238. A person seeking relief under the Act can get only that much relief beyond which he must seek the help of C.P. Code, Ss. 92 and 93, the proper parties to the suit being the trustees only. 35 I.C. 880. Leave to sue mutwalli of wakf created after 1863 can be granted under S. 18: see 38 C.W.N. 1056=1934 C. 741.

or in which the endowment made for the support of an establishment is appropriated partly to religious and partly to secular uses.

the Board of Revenue, before transferring to any trustee, manager or superintendent, or to any committee of management appointed under this Act, shall determine what portion, if any, of the said land or other property shall remain under the superintendence of the said Board for application to secular

and what portion shall be transferred to the superintendence of the trustee, manager or superintendent, or of the committee,

and also what annual amount, if any, shall be charged on the land or other property which may be so transferred to the superintendence of the said trustee, manager or superintendent, or of the committee, and made payable to the said Board or to the local agents, for secular uses as aforesaid.

In every such case the provisions of this Act shall take effect only in respect to such land and other property as may be so transferred.

Government not to hold charge henceforth of property for support of any mosque, temple,

22. Except as provided in this Act, it shall not be lawful 1[* any Government in India or for any officer of any Government in his official character,

to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple or other religious establishment, or to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque. temple or other establishment, or

⁽¹⁾ The words "after the passing of this Act" were repealed by Act XVI of 1874.

FRESH PETITION.—The leave of the District Court under S. 18 once refused may subsequently be granted on a fresh petition to that effect on proper grounds. 12 I.C. 128=(1911) 2 M.W.N. 167.

APPEAL.—The order of a District Judge refusing to grant leave to sue under S. 18 is not appealable. 3 P. 1018=1925 P. 138.

REVISION AND COSTS.—S. 18 gives the Court a very wide discretion in regard to matters coming under it. 2 L.W. 345=28 I.C. 637.

to nominate or appoint any trustee, manager or superintendent thereof, or to be in any way concerned therewith.

23. Nothing in this Act shall be held to affect the pro-

Effect of Act in respect of regulations therein mentioned, and of buildings of antiquity, etc.

"India".

visions of the Regulations mentioned in this Act, except in so far as they relate to mosques, Hindu temples and other religious establishments; or to prevent the Government from taking such steps as it may deem

necessary, under the provisions of the said regulations, to prevent injury to and preserve buildings remarkable for their antiquity, or for their historical or architectural value or required for the convenience of the public.

1[24. The word "India" in this Act shall mean British India. 7

APPENDIX X. The Religious Societies Act (I of 1880).2

Year.	No.	Short title.	Amendment.
1880	I	The Religious Societies Act.	Reapled in part, Act X of 1914, Amended Act XXXVIII of 1920. Amended by Government of India (Adaptation of Indian Laws) Order, 1937.

CONTENTS. PREAMBLE.

SECTIONS.

1.

- Short title. Local extent.

 Appointment of new trustee in cases not otherwise provided for.

 Appointment under section 2 to be recorded in a memorandum under the hand of the chairman of the meeting.

4. Property to vest in new trustees without conveyance.

5. Saving of existing modes of appointment and conveyance. 6. Provision for dissolution of societies and adjustment of their affairs.

Upon a dissolution no member to receive profit. Saving of certain provisions of instrument.

Questions may be submitted to High Court.

Substituted by A.O., for original section.
 For Statement of Objects and Reasons, see Gazette of India, 1879, Pt. V, p. 770; for Proceedings in Council, see *ibid.*, 1879, Supplement pp. 598, 745; and 174, *ibid.*, 1890, Supplement, pp. 23 and 170.

[9th January, 1880.

An Act to confer certain powers on Religious Societies.

Whereas it is expedient to simplify the manner in which certain bodies of persons associated for the purpose of maintaining religious worship may hold property acquired for such purpose, and to provide for the dissolution of such bodies and the adjustment of their affairs and for the decision of certain questions relating to such bodies; It is hereby enacted as follows:—

Short title.

1. This Act may be called THE RELIGIOUS SOCIETIES ACT, 1880.

It 1[* * * * *] shall extend to the whole of British India:

Local extent.

but nothing herein contained shall apply to any Hindus, Muhammadans or Buddhists, or to any persons whom the Provincial Government may from time to time, by notification in the Official Gazette, exclude from the operation of this Act.

Appointment of new trustee in cases not, otherwise provided for.

2. When any body of persons associated for the purpose of maintaining religious worship has acquired, or hereafter shall acquire, any property,

and such property has been or hereafter shall be vested in trustees in trust for such body,

and it becomes necessary to appoint a new trustee in the place of or in addition to any such trustee or any trustee appointed in the manner hereinafter prescribed,

and no manner of appointing such new trustee is prescribed by any instrument by which such property was so vested or by which the trusts on which it is held have been declared, or such new trustee cannot for any reason be appointed in the manner so prescribed,

such new trustee may be appointed in such manner as may be agreed upon by such body, or by a majority of not less than two-thirds of the members of such body actually present at the meeting at which the appointment is made.

⁽¹⁾ The words "shall come into force at once and" were repealed by Act X of 1914, Sch. II.

Appointment under section 2 to be recorded in a memorandum under the hand of the chairman of the meeting.

3. Every appointment of new trustees under section 2 shall be made to appear by some memorandum under the hand of the chairman for the time being of the meeting at which such appointment is made.

Such memorandum shall be in the form set forth in the schedule hereto annexed, or as near thereto as circumstances allow, shall be executed and attested by two or more credible witnesses in the presence of such meeting, and shall be deemed to be a document of which the registration is required by the Indian Registration Act, 1877, section 17.

4. When any new trustees have been appointed, whether in the manner prescribed by any such instrument as aforesaid or in the manner trustees without hereinbefore provided the property sub-

new trustees without conveyance.

hereinbefore provided, the property subject to the trust shall forthwith, notwith-

standing anything contained in any such instrument, become vested, without any conveyance or other assurance, in such new trustees and the old continuing trustees jointly, or, if there are no old continuing trustees, in such new trustees wholly, upon the same trusts, and with and subject to the same powers and provisions, as it was vested in the old trustees.

Saving of existing modes of appointment and conveyance.

5. Nothing herein contained shall be deemed to invalidate any appointment of new trustees, or any conveyance of any property, which may hereafter be made as heretofore was by law required.

6. Any number not less than three-fifths of the members of any such body as aforesaid may at a

Provision for dissolution of societies and adjustment of their affairs. of any such body as aforesaid may at a meeting convened for the purpose determine that such body shall be dissolved; and thereupon it shall be dissolved forthwith.

or at the time then agreed upon; and all necessary steps shall be taken for the disposal and settlement of the property of such body, its claims and liabilities according to the rules of such

⁽¹⁾ See now Act XVI of 1908.

body applicable thereto, if any, and if not, then as such body at such meeting may determine:

Provided that, in the event of any dispute arising among the members of such body, the adjustment of its affairs shall be referred to the principal Court of original civil jurisdiction of the district in which the chief building of such body is situate; and the Court shall make such order in the matter as it deems fit.

7. If upon the dissolution of any such body there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of such body or any of them, but shall be given to some other body of persons associated for the purpose of maintaining religious worship or some other religious or charitable purpose to be determined by the votes of not less than three-fifths of the members present at a meeting convened in this behalf, or in default thereof by such Court as last aforesaid.

8. Nothing in sections 6 and 7 shall be deemed to affect any provision contained in any instrument for the dissolution of such body, or for the payment or distribution of such property.

Questions may be submitted to High Court. the matters hereinbefore referred to, or otherwise, as to whether any person is a member of any such body as aforesaid, or as to the validity of any appointment under this Act, any person interested in such question may apply by petition to the High Court for its opinion on such question. A copy of such petition shall be served upon, and the hearing thereof may be attended by, such other persons interested in the question as the Court thinks fit.

Any opinion given by the Court on an application under this section shall be deemed to have the force of a declaratory decree.¹

⁽¹⁾ As to effect of a declaratory decree, see S. 43 of the Specific Relief Act, 1877 (I of 1877).

The costs of every application under this section shall be in the discretion of the Court.

THE SCHEDULE.

(See section 3.)

Memorandum of the appointment of the new trustees of the (describe the church, chapel, or other building and property) situate at a meeting duly convened and held for that purpose (in the vestry of the said

) on the day of of

Chairman.

Names and descriptions of all the trustees on the constitution or last appointment of trustees, made the day of

(here insert the same.)

Names and descriptions of all the trustees in whom the said (chapel and property) now become legally vested.

First .- Old continuing trustees:-

(here insert the same.)

Second.—New trustees now chosen and appointed:

(here insert the same.)

Dated this

Dated this

Dated this

day of

19

A.B.,

meeting, at and in the presence of the said meeting on the said meeting of the said meeting of the said Meeting.

C. D. E. F.

APPENDIX XI.

The Charitable Endowments Act. (VI of 1890).1

EFFECT OF LEGISLATION.

Year.	No.	Short title.	How repealed or otherwise affected by legislation.
1890	VI	The Charitable Endowments Act, 1890.	Repealed in part (as to Burma) by Act XIII of 1898. Ss. 3 (1), 4 (3) (c), 11, 13 amend- ed by Act XXXVIII of 1920 and A.O. 1937.

⁽¹⁾ For Statement of Objects and Reasons, see Gazette of India, 1889, Pt. V, p. 137; for Report of the Select Committee, see ibid., 1890, p. 65; and

[7th March, 1890.

WHEREAS it is expedient to provide for the vesting and administration of property held in trust for charitable purposes; it is hereby enacted as follows:-

(1) This Act may be called THE Title; extent and commencement. CHARITABLE ENDOWMENTS ACT. 1890.

- (2) It extends to the whole of British India, inclusive of 1[* * *] British Baluchistan; and
- (3) It shall come into force on the first day of October, 1890
- In this Act "charitable purpose" includes relief of the poor, education, medical relief and the ad-Definition. vancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship.
- ²[(1)] The Central Government may appoint officer of the Government by the name of Appointment and his office to be treasurer of charitable endowincorporation of ments for India, and the Government of Treasurer of charitable endowments. any Province may appoint an officer of the Government by the name of his office to be treasurer of charitable endowments for the Province. 1
- (2) Such Treasurer shall, for the purposes of taking, holding and transferring movable or immovable property under the authority of this Act, be a corporation sole by the name of the Treasurer of Charitable Endowments for 2[India or, as the case may be, the Province] and, as such Treasurer, shall have perpetual succession and a corporate seal, and may sue and be used in his corporate name.

3 of the Sonthal Parganas Settlement Regulation (III of 1872) as amended by the Sonthal Parganas Justice and Laws Regulation (III of 1899), Bengal

(1) The words "Upper Burma, and" were repealed by the Fifth Sche-

dule of the Burma Laws Act (XIII of 1898), Burma Code.
(2) Substituted by Order in Council, 1937.

for Proceedings in Council, see *ibid.*, 1889, Pt. VI, pp. 117 and 190, and *ibid.*, 1890, Pt. VI, p. 37.

The Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act (XIII of 1892), Burma Code.

The Act has been declared in force in the Sonthal Parganas under sec.

- ¹3-A. In the subsequent provisions of this Act "the appropriate Government" means, as res-Definition of "appropriate Govern-ment", etc. pects a charitable endowment, the objects of which do not extend beyond a single Province and are not objects to which the executive authority of the Central Government extends, the Government of the Province, and as respects any other charitable endowment the Central Government. 7
- 4. (1) Where any property is held or is to be applied in trust for a charitable purpose, the vesting ²[appropriate Government], if it thinks property in Treafit, may, on application made as hereinsurer. after mentioned, and subject to the other provisions of this section, order, by notification3 in the official Gazette, that the property be vested in the Treasurer of Charitable Endowments on such terms as to the application of the property or the income thereof as may be agreed on between the 2[appropriate Government] and the person or persons making the application, and the property shall thereupon so vest accordingly.
- (2) When any property has vested under this section in a Treasurer of Charitable Endowments, he is entitled to all documents of title relating thereto.
 - (3) 4[* * *]
- (4) An order under this section vesting property in a Treasurer of Charitable Endowments shall not require or be deemed to require him to administer the property, or impose or be deemed to impose upon him the duty of a trustee with respect to the administration thereof.

Sec. 3-A inserted by Order in Council, 1937.
 Substituted by Order in Council, 1937.

⁽³⁾ For notifications issued under this section in conjunction with sec. 5 for-

⁽¹⁾ Bengal, see Beng. Stat. R. & O., Vol. II. (2) Bombay, see Bom. R. & O., Vol. I. (3) Madras, see Mad. R. & O., Vol. I. (4) Punjab, see Punj. List of Local R. & O. (5) The United Provinces of Agra and Oudh, see U.P. List of Local R. & O., Vol. I, Pt. I. See also note under sec. 7 (1).

(4) Omitted by Order in Council, 1937.

(1) On application made an hereinafter mentioned and with the concurrence of the person or Schemes for admaking the application, the persons ministration of pro-¹[appropriate Government] if it thinks fit, perty vesited in the Treasurer. may settle a scheme for the administration

of any property which has been or is to be vested in the Treasurer of Charitable Endowments, and may in such scheme appoint, by name or office, a person or persons not being or including such Treasurer, to administer the property.

(2) On application made as hereinafter mentioned, and with the concurrence of the person or persons making the application, the '[appropriate Government] may, if it thinks fit, modify any scheme settled under this section or substitute another

scheme in its stead.

- (3) A scheme settled, modified or substituted under this section shall, subject to the other provisions of this section, come into operation on a day to be appointed by the 1[appropriate Government] in this behalf, and shall remain in force so long as the property to which it relates continues to be vested in the Treasurer of Charitable Endowments or until it has been modified or another such scheme has been substituted in its stead.
- (4) Such a scheme when it comes into operation, shall supersede any decree or direction relating to the subject-matter thereof in so far as such decree or direction is in any way repugnant thereto, and its validity shall not be questioned in any Court, nor shall any Court give, in contravention of the provisions of the scheme or in any way contrary or in addition thereto, a decree or direction regarding the administration of the property to which the scheme relates:

²[Provided that nothing in this sub-section construed as precluding a Court from inquiring whether the Government by which a scheme was made was the appropriate Government. 7

(5) In the settlement of such a scheme effect shall be given to the wishes of the author of the trust so far as they

Substituted by Order in Council, 1937.
 Proviso inserted by Order in Council, 1937.

can be ascertained, and, in the opinion of the ¹[appropriate Government], effect can reasonably be given to them.

- (6) Where a scheme has been settled under this section for the administration of property not already vested in the Treasurer of Charitable Endowments, it shall not come into operation until the property has become so vested.
- Mode of applying for vesting orders and schemes.

 6. (1) The application referred to in the two last foregoing sections must be made,—
- (a) if the property is already held in trust for a charitable purpose, then by the person acting in the administration of the trust, or, where there are more persons than one so acting, then by those persons or a majority of them; and

(b) if the property is to be applied in trust for such a purpose, then by the person or persons proposing so to apply it.

- (2) For the purposes of this section the executor or administrator of a deceased trustee of property held in trust for a charitable purpose shall be deemed to be a person acting in the administration of the trust.
- 7. [Exercise by Governor-General in Council of powers of Local Government.] Repealed by A.O., 1937.
- 8. (1) Subject to the provisions of this Act, a Treasurer of Charitable Endowments shall not, as such Treasurer, act in the administration of any trust whereof any of the property is for the time being vested in him under this Act.
- (2) Such Treasurer shall keep a separate account of each property for the time being so vested in so far as the property consists of securities for money, and shall apply the property or the income thereof in accordance with the provision made in that behalf in the vesting order under section 4 or in the scheme, if any, under section 5, or in both those documents.
- (3) In the case of any property so vested other than securities for money, such treasurer shall, subject to any special order which he may receive from the authority by whose order the property became vested in him, permit the persons acting in the administration of the trust to have the possession, manage-

⁽¹⁾ Substituted by Order in Council, 1937.

ment and control of the property, and the application of the income thereof, as if the property had been vested in them.

A Treasurer of Charitable Endowments shall cause to be published annually in the Official Annual publica-tion of list of pro-perties vested in Gazette, at such time as the 1[appropriate Government] may direct, a list of all pro-Treasurer. perties for the time being vested in him

under this Act and an abstract of all accounts kept by him under sub-section (2) of the last foregoing section.

(1) A Treasurer of Charitable Endowments shall always be a sole trustee and shall not. as Limitation of funcsuch Treasurer, take or hold any property tions and powers of Treasurer. otherwise than under the provisions of this Act, or subject to those provisions, transfer any property vested in him except in obedience to a decree divesting him of the property, or in compliance with a direction in that behalf issuing from the authority by whose order the property became vested in him.

- (2) Such a direction may require the Treasurer to sell or otherwise dispose of any property vested in him, and, with the sanction of the authority issuing the direction, to invest the proceeds of the sale or other disposal of the property in any such security for money as is 1[specified in the direction] or in the purchase of immovable property.
- (3) When a Treasurer of Charitable Endowments is divested, by a direction of the [appropriate Government] under this section, of any property, it shall vest in the person or persons acting in the administration thereof and be held by him or them on the same trusts as those on which it was held by such Treasurer.

⁽¹⁾ Substituted by Order in Council, 1937.

SECS. 10 AND 11.—Under sec. 10 the defendant has the option either to deposit money or to furnish security. The Court can order him to do one of these two things but cannot specify which he is to do. 69 I.C. 658. The security furnished under sec. 10 however relates to the expenditure actually incurred or likely to be incurred by the plaintiff which is quite a different matter from the costs of the suit. The Court cannot direct payment of this expenditure otherwise than in accordance with that section, and when security has been furnished the Court is incompetent to order execution against the surety. (Ibid.)

11. If the office held by an officer of the Government

Provisions for continuance of office of Treasurer in certain contingencies.

who has been appointed to be a Treasurer of Charitable Endowments is abolished or its name is changed, the ¹[appropriate Government] may appoint the same or another officer of the Government by the name of his office to be such Treasurer, and thereupon the holder of the later office shall be deemed for the purposes of this Act to be the successor in office of the holder of the former office.

Transfer of property from one treasurer to another.

Tansfer of property from one treasurer to another.

Transfer of property from one treasurer to another.

Transfer of property from one treasurer for any Province for which such a treasurer has not previously been appointed or for

any other reason it appears to the Central Government that any property vested in a Treasurer of Charitable Endowments should be vested in another such treasurer, that Government may direct that the property shall be so vested and thereupon it shall vest in that other treasurer and his successors as fully and effectually for the purposes of this Act as if it had been originally vested in him under this Act.]

²[13. (1) ³[* * *]

- (2) The ¹[appropriate Government] may make rules consistent with this Act for—
- (a) prescribing the fees to be paid to the Government in respect of any property vested under this Act in a Treasurer of Charitable Endowments;
- (b) regulating the cases and the mode in which schemes or any modification thereof are to be published before they are settled or made under section 5;
- (c) prescribing the forms in which accounts are to be kept by Treasurers of Charitable Endowments, and the mode in which such accounts are to be audited; and
- (d) generally, carrying into effect the purposes of this Act.]

Substituted by Order in Council, 1937.
 Substituted by Act XXXVIII of 1920.

⁽³⁾ Omitted by A.O., 1937.

- No suit shall be instituted against the '[Crown] in 14. respect of any thing done or purporting to Indemnity and be done under this Act, or in respect of any Government Treasurer. alleged neglect or omission to perform any duty devolving on the Government under this Act, or in respect of the exercise of, or the failure to exercise, any power conferred by this Act on the Government, nor shall any suit be instituted against a Treasurer of Charitable Endowments except for divesting him of property on the ground of its not being subject to a trust for a charitable purpose, or for making him chargeable with or accountable for the loss or misapplication of any property vested in him, or the income thereof, where the loss or misapplication has been occasioned by or through his wilful neglect or default.
- 15. Nothing in this Act shall be construed to impair the operation of section 111 of the 2Statute Saving with respect to Advocate-53, George III, Chapter 155, or of any other enactment for the time being in force, General and Official Trustee. respecting the authority of an Advocate-

General at a presidency to act with respect to any charity, or of sections 8, 9, 10 and 11 of the Act3 No. XVII of 1864 (an Act to constitute an Office of Official Trustee) respecting the vesting of property in trust for a charitable purpose in an Official Trustee.

16. [General Controlling authority of the Governor-General in Council. Repealed by Act XXXVIII of 1920, section 2 and Sch. I.

Substituted by A.O., 1937, for "Government".
 The East India Company Act, 1813 (Coll. Stats. Ind., Vol. I).
 The Official Trustees Act, 1864 (which has been repealed by Act

II of 1913).

Sec. 14.—The administration of the property of a hospital was vested in the Treasurer of Charitable Endowments under sec. 3 of the Charitable Endowments Act. Hence a suit could not be filed against the Secretary alone as representing the Committee. Sec 26 O.C. 333=1924 Oudh 128. Suit for property vested in the Treasurer for Charitable Endowments. Settlor alleged to have only life interest—Suit based on a title paramount to the settlors-Maintainability. See 1926 Oudh 431.

APPENDIX XII.

The Charitable and Religious Trusts Act (XIV of 1920).

Effect of Legislation.

Year.	No.	Short title.	How repealed or otherwise affected by Legislation.
1920	XIV	The Charitable and Religious Trusts Act, 1920.	Section 2 amended by Act XLI of 1923, Sec. 2., A.O. 1937.

[20th March, 1920.

An Act to provide more effectual control over the administration of Charitable and Religious Trusts.

Whereas it is expedient to provide facilities for the obtaining of information regarding trusts created for public purposes of a charitable or religious nature, and to enable the trustees of such trusts to obtain the directions of a Court on certain matters, and to make special provision for the payment of the expenditure incurred in certain suits against the trustees of such trusts; It is hereby enacted as follows:—

Short title and CHARITABLE AND RELIGIOUS TRUSTS ACT, 1920.

(2) It extends to the whole of British India:

Provided that the '[Government of any Province] may, by notification in the '[Official Gazette], direct that this Act, or any specified part thereof, shall not extend to '[that Province or any specified area therein] or to any specified trust or class of trusts.

⁽¹⁾ Substituted by Order in Council, 1937.

SECS. 1 AND 3.—The Act does not cease to apply to a case where the trustee has parted with the entire trust property. 78 I.C. 174. Persons who claim adversely to the trust and who are not liable under sec. 3 are not proper parties to an application for directing the trustee to produce the accounts. 78 I.C. 174. As to applicability of the Act to property on condition of holding so long as temple lasted—No direction as to appropriation of income—Public trust, if constituted. See 3 Luck. 392=1928 O. 241=5 O.W.N. 50. The Madras Hindu Religious Endowments Act (II of 1927) has not taken away the jurisdiction of the District Judge under sec. 5 of the Charitable and Religious Truts Act. To a certain extent both the Acts cover the same ground. When the District Judge passes an order under sec. 5 of Act XIV of 1920, because the Madras Hindu Religious Endowment Board showed no inclination to exercise its powers under the Madras Act, it is a CC-0. Jangamwadi Math Collection. Digitized by eGangotri

In this Act unless there is anything repugnant in the subject or context, "the Court" means the Interpretation. Court of the District Judge 1[or any other Court empowered in that behalf by the ²[Provincial Government], and includes the High Court in the exercise of its ordinary original civil jurisdiction.

(2) Substituted by A.O., 1937.

good reason for exercising his discretion; and the order cannot be revised by the High Court under sec. 115, C.P. Code. 152 I.C. 1052=1935 Mad. 56 (1)=68 M.L.J. 55.

In order that the Charitable and Religious Trusts Act of 1920 may apply, the trust must be substantially for public purpose. It is not sufficient if one of the purposes of the trust is public. A mere provision for the service of sadhus, occasional guests and way-farers in a dedication to an ideal of does not render the dedication substantially for public purposes. A deed of dedication to a Thakur or arpannama, after providing that the Government demands, and the zamindar's rent were to be the first and important expenscs out of the income, provided, "whatever may be the residue after meeting the expenses of puja path, ragbhog, occasional utsavas, sevas of sadhus, atithis and abbyagatas it shall be spent in making improvement in the property of the said Thakurji". Held, that the main purpose of the trust was making provision for the due worship of the idol and the performance of the necessary ceremonies; that the seva of sadhus, guests and travellers was not the main object of the trust but was merely incidental or ancillary to the worship of the idol; that by the terms of the arpannama nothing was dedicated to the public and the trust created was therefore a private trust and not a public trust falling under the Charitable and Religious Trusts Act of

1920. 21 Pat. 815=A.I.R. 1943 Pat. 135.

To constitute a trust "created for a public purpose of a charitable or religious nature" within the meaning of Act XIV of 1920, the author or authors of the trust must be ascertained and the intention to create a trust must be indicated by words or acts with reasonable certainty. Moreover, the purpose of the trust, the trust property and the beneficiaries must be indicated so as to enable the Court to administer the trust if required. The fact that the property is recorded in the Lakheraj register as Bishunprit land is not conclusive to show that it is property gifted to the idol for public purpose. Nor would the description of the grant as gurudakshina be conclusive of the grant being for public purposes. Gurudakshina means gift by a disciple to his Guru, and when the property is granted to the Mahant to be held by the grantee generation after generation, the gift must be taken to be a gift to the Mahant personally. Such words are not reconcilable with the view that granter was in fact making a dedication. Even if the grant is taken to be a grant to the idol and not to the Mahant, that in no way shows that the property is trust property held for public purposes. Where the evidence at the utmost only suggests that the properties were possibly debottar and no more, the fact that the property belongs to an idol would in no way establish that the trust was public. 21 Pat. 815=A.I.R. 1943 Pat. 135.

SEC. 2 .- Under this Act the District Court is a Court subordinate to the

High Court. 27 A.L.J. 911=1929 All. 581=121 I.C. 267.

⁽¹⁾ These words were added after the words "District Judge" by Act XLI of 1923, sec. 2.

3. Save as hereinafter provided in this Act, any person

Power to apply to the Court in respect of trusts of a charitable or religious nature. having an interest in any express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the Court within the local limits of whose juris-

diction any substantial part of the subject-matter of the trust is situate to obtain an order embodying all or any of the following directions, namely:—

SEC. 3.—The Charitable and Religious Trusts Act of 1920 applies only to those cases where the entire benefit under the wakf or trust is allotted for public purposes. Also where a trust is of public nature any person having an interest in the said trust is entitled to make the application contemplated by sec. 3 of the Act of 1920 but he is not so entitled if the purpose of the trust is partly public and partly private. In the latter case his remedy is to make an application under sec. 4 of the Wakf Act of 1923. 4 Luck. 429=1929 Oudh 225 (F.B.). Sec. 3 applies to a mixed trust partly for a public and charitable purpose and partly for private purpose. 163 I.C. 234=1936 A. L.J. 546=1936 A. 411. See also 11 O.W.N. 1435=1936 Oudh 96. Act XIV of 1920 is not inapplicable to a trust merely because a small sum is reserved for purposes which may not be strictly public purposes. Where under the same deed or will either a specified part of the property, for example, a defined share in the property, or a specified part of the income has been definitely set apart for public purposes, then the mere fact that any other part of the property or any other specified part of the income is for private purposes would not take the case out of the provisions of the Act. 1937 A.L.J. 1183=I.L.R. (1938) All. 1=1937 All. 786. See also 173 I.C. 453=1937 Cal. 313. Sec. 3 of the Act sets out what must be established in order to bring the matter within the purview of the Act. Put shortly there must be a trust. It must be einer express or constructive. It must have been either created or it must be existing for a public purpose. that public purpose must be of a charitable or a religious nature. Though the trust which arises in the case of a dedication to an idol is not the exact kind of trust which the English law contemplates, nevertheless they are trusts, though of a special and particular kind and they are the sort which the Charitable and Religious Trusts Act is intended to cover. 1941 N.L.J. 396=1941 Nag. 317. See also I.L.R. (1942) Nag. 468=197 I.C. 602. The words "having an interest in a trust" must in each case depend on the nature of the trust. 50 A. 880=26 A.L.J. 1379=111 I.C. 129. See also 119 I.C. 365. A person who is a worshipper at a Gurdwara is a person interested in a public trust for this Act. 36 P.L.R. 162=1934 Lah. 949. As to what is a public trust, see 11 O.W.N. 1435. Where the rules of an alleged trust provide for the carrying on of a sort of banking business whereby loans are to be made at interest either on security or guarantee, the object of the trust is hardly consistent with its being of a religious or charitable nature. 62 I.A. 146=57 A. 330=39 C.W.N. 865=1935 P.C. 97=69 M.L.J. 1 (P.C.). There can be no doubt on the wording of the statute that the Charitable and Religious Trusts Act applies only to those cases where the entire benefit under the wakf in trust is allotted to public purposes and not

(1) directing the trustee to furnish the petitioner through the Court with particulars as to the nature and objects of the trust, and of the value, condition, management and application of the subject-matter of the trust, and of the income belonging thereto, or as to any of these matters, and

(2) directing that the accounts of the trust shall be

examined and audited:

Provided that no person shall apply for any such direction in respect of accounts relating to a period more than three years prior to the date of the petition.

- 4. (1) The petition shall show in what way the petitioner claims to be interested in the trust, and Contents and veri shall specify, as far as may be, the partification of petition. culars and the audit which he seeks to obtain.
- (2) The petition shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908, for signing and verifying plaints.

where the purpose of the trust is partly public and partly private. In every case, the real substance of the trust and the primary intention of the creator of the trust have to be looked at. If the intention of the creator was the creation of a trust for a public purpose, the dedication in favour of the poor relations of the creator who are classed with the helpless widows in the

meighbourhood will not destroy the public nature of the trust. 173 I.C. 453=A.I.R. 1937 Cal. 313. See also 1937 All. 786.

"Public Trust"—Mosque built by Public Subscription.—Where a mosque was built with public subscriptions and used by the Mahomedan public for offering prayers and further was admitted by the respondent to be a religious trust in a prior suit, held, that such a mosque was a public trust and that an application under sec. 3 calling upon the respondent to furnish certain information should be decided on merits. 17 Lah. 768= 165 I.C. 664 (1)=1936 Lah. 695. To constitute a trust "created or existing for a public purpose of a charitable or religious nature," the author or authors of the trust must be ascertained and the intention to create a trust must be indicated by words or acts with reasonable certainty. Moreover, the purpose of the trust, the trust property, and the beneficiaries must be indicated so as to enable the Court to administer the trust if required. (57 A. 330=62 I.A. 446, Rel. on). 65 I.A. 252=42 C.W.N. 1013=I. L.R. (1938) Lah. 453=A.I.R. 1938 P.C. 195=(1938) 2 M.L.J. 228 (P.C.).

SEC. 3 (2) .- Under Cl. 2 of sec. 3, the Court is enabled to direct the examination and audit of the accounts in whosoever's hands the funds or

the properties of the trust may be, quite apart from whether he is a trustee or not. 175 I.C. 636=19 Pat.L.T. 639=A.I.R. 1938 Pat. 280.

REVISION.—The provisions of sec. 115, C.P. Code, and sec. 44, Punjab Courts Act, are very wide and an order of the District Judge under sec. 3 is revisable. 17 Lah. 768=165 I.C. 664=1936 Lah. 695. Where a Judge

Procedure on peti3, after taking such evidence and making such inquiry, if any, as it may consider necessary, is of opinion that the trust to which the petition relates is a trust to which this Act applies, and that the petitioner has an interest therein, it shall fix a date for the hearing of the petition, and shall cause a copy thereof together with notice of the date so fixed, to be served on the trustee and upon any other person to whom in its opinion notice of the petition should be given.

passes an order under sec. 3 of the Act, directing a mutawalli to file accounts within a certain time, it cannot be said that in law no revision would

lie from such order. 1938 O.W.N. 1054=1938 Oudh 262.

Secs. 3 and 5: Scope of.—The Act is intended to provide more effectual control over the administration of charitable and religious trusts and provision is made therein for obtaining an order calling on the trustee to give particulars of the object of the trust and if the trust is denied, to file a suit. No such provision is made in the Mussalman Wakf Act of 1923. 1927 Pat. 189. See also 1936 Lah. 695. Application under—No notice to all the trustees—Notice served on three trustees only—Legality of order. 1924 M.W.N. 515=82 I.C. 733=1925 M. 135. An application under see. 3 of the Charitable and Religious Trusts Act does not cease to be maintainable simply because the opponents raise a question of title. Though under sec. 5 (6) of the Act the Court has no jurisdiction to decide any question of title between the petitioner and any one claiming title adversely to the trust, it does not mean that the moment a claim adverse to the trust is advanced, the jurisdiction of the Court is ousted. When such a claim is put forward, it in effect amounts to a denial of the existence of the trust. It is open to the claimant to take advantage of sec. 5 (3) and to get the question determined in a regular suit. If he does not avail himself of this course, the Court must decide whether a trust exists. The opposing party has still his remedy by way of suit. 58 Bom. 623=36 Bom. L.R. 687=1934 Bom. 343.

SEC. 5.—In proceedings for examination of accounts of trust property under the Charitable and Religious Trusts Act (1920), the District Judge did not refer to the original grant at all, but based his order on certain statements which were wholly irrelevant and inadmissible for the purpose of construing the terms of the original grant. Held, the order was illegal and was vitiated by material irregularity and could be set aside in revision. The fact that the petitioner had the remedy of suit open to him is no bar to the order being set aside in revision. 58 Bom. 623=36 Bom.L.R. 687=1934 Bom. 343. On this section, see also 152 I.C. 1052=1935 Mad. 56=68 M.L.J. 55, cited under sec. 1. The District Judge has no jurisdiction under the Act to decide questions of title. The Act does not bar the questions of title being agitated and decided in a regular suit by a Court exercising ordinary original civil jurisdiction. The mere fact that the Act provides a summary remedy does not create a bar to the filing of a regular suit by the unsuccessful party. The party who seeks to oust the jurisdiction of the Civil Court must establish his contention. 152 I.C. 861=11 O.W.N. 1435=1935 Oudh 96.

Sec. 5 confers powers on the Court to arrive at a decision on the question whether the trust was a trust to which the Act applied, upon a sum-

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(2) On the date fixed for hearing of the petition, or on any subsequent date to which the hearing may be adjourned, the Court shall proceed to hear the petitioner and the trustee, if he appears, and any other person who has appeared in consequence of the notice, or who it considers ought to be heard, and shall make such further inquiries, if any, as it thinks fit. The trustee may, and, if so required by the Court, shall at the time of the first hearing or within such time as the Court may

mary enquiry, and it is clearly necessary where objection is taken to the applicability of the Act, that the Court shall decide this question. But this is subject to the provision in sec. 5 (3) which provides for stay of proceeding to enable the contesting party to file a suit for a declaration. Where a party fails to file a suit within the time allowed, the District Judge is perfectly justified in making a summary enquiry and coming to a finding that the Act was applicable. 1942 O.W.N. 337=A.I.R. 1942 Oudh 387.

Sec. 5 (3).—In a suit by a trustee under sec. 5 (3) for a declaration that the trust in dispute is not a public trust and that the Act does not apply thereto, it being common ground that the property originally stood in the names of the various mahants and now stand recorded in the name of idol with the reigning mahant as shebait, and in possession of the shebaits on behalf of the idol, the onus is on the defendant alleging that the property is trust property held for public purposes to prove affirmatively that a trust of a public character was imposed upon the property. By mere acquisition by a mahant a property does not lose its secular character and assume a religious character, and the descent of property from guru to chela does not warrant the presumption that it is religious property. The plaintiff can be defeated only if the defendant establishes affirmatively that a trust of a public character was imposed upon the property. 21 Pat. 815—A.I.R. 1943 Pat. 135.

SEC. 5 (3) AND (4).—Sec. 5 (4) in terms gives the Court of the District Judge jurisdiction to decide, under certain circumstances, the question whether a trust is one to which the Act applies. When either its existence or its being a trust to which the Act applies, is denied, and no undertaking as contemplated by sub-r. (3) is given, the District Judge is exercising a jurisdiction vested in him, if he decides as to the nature of the trust. 178 I.C. 167=1938 O.W.N. 1054=A.I.R. 1938 Oudh 262. Under sec. 5 (4) the Court has power to decide a question of title raised if no undertaking is given to file a declaratory suit under sub-sec. (3), although the order of the Court does not operate as res judicata and does not preclude the persons aggrieved from filing a suit. I.L.R. (1944) Nag. 775=1944 N.L.J. 170 =A.I.R. 1944 Nag. 190.

Sec. 5, Cl. (6).—The District Judge is not to make an elaborate inquiry into questions of title in proceedings under the Act. S. 5 (6) would seem to prohibit it except in the circumstances mentioned in the section itself. 1944 A.L.W. 488.

Secs. 5 and 6.—On an application under the charitable and Religious Trusts Act praying that the respondents be directed to file accounts of their management of the property alleging that it is a religious endowment, the District Judge is no doubt authorised to decide the question whether the property is or is not devoted to public, religious or charitable purposes. But the

permit present a written statement of his case. If he does present a written statement, the statement shall be signed and verified in the manner prescribed by the Code of Civil Procedure. 1908, for signing and verifying pleadings.

- (3) If any person appears at the hearing of the petition and either denies the existence of the trust or denies that it is a trust to which this Act applies, and undertakes to institute within three months a suit for a declaration to that effect and for any other appropriate relief, the Court shall order a stay of the proceedings and, if such suit is so instituted, shall continue the stay until the suit is finally decided.
- (4) If no such undertaking is given, or if after the expiry of the three months no such suit has been instituted, the Court shall itself decide the question.
- (5) On completion of the inquiry provided for in subsection (2), the Court shall either dismiss the petition or pass thereon such other order as it thinks fit:

proceedings of the District Judge are of a summary nature and do not fall within the definition of a suit and his decision cannot operate as res judicata. 36 P.L.R. 13=1934 Lah. 771. The decision of the District Judge under the Act—a decision from which by sec. 12 of the Act there is no appeal—is a decision in a summary proceeding which is not a suit nor of the same character as a suit, which has not been made final by any provision of the Act, and in respect of which the doctrine of res judicata does not apply so as to bar a regular suit even in the case of a person who was a party to the proceedings under the Act. The terms of sec. 6 of the Act are intended to define the consequences of the failure to comply with any order that may be passed under sec. 5 (5) of the Act, but the words 'if a trustee without reasonable excuse fails to comply' in the section cannot be read as excluding a contention in a regular suit that the plaintiff is not a trustee or to prevent a similar contention being raised by a defendant to a suit under sec. 92, C.P. Code. 67 I.A. 1=I.L.R. (1940) Kar. (P.C.) 25=15 Luck. 1=A.I.R. 1940 P.C. 7=(1940) 1 M.L.J. 1 (P.C.). Per Niamatulla, J.—The order of the District Judge under sec. 5 of Act XIV of 1920 is only an order passed in summary proceedings and it has not the force of a decree and has the effect merely of withdrawing certain restrictions imposed on the persons desirous of instituting suits under sec. 92, C.P. Code. The decision under sec. 5 on an application for examination of accounts of the alleged trust property does not bar a suit for a declaration that the property does not belong to the trust but is in the absolute ownership of the alleged trust property does not bar a suit for a declaration that the property does not belong to the trust but is in the absolute ownership of the alleged trustee. 1929 All. 506. The maintenance of a suit so as to nullify the effect of sec. 6 of the Act is not permissible. 27 A.L.J. 653=118 I.C. 513=1929 A. 506.

Sec. 5 does not by itself contemplate the intervention of other persons for compelling the mutawalli to file his accounts except possibly as a mere reminder to the Judge that the accounts have not been filed with a view to induce the Judge to take proceedings under sec. 10. 118 I.C. 717.

Provided that, where a suit has been instituted in accordance with the provisions of sub-section (3), no order shall be passed by the Court which conflicts with the final decision therein.

- (6) Save as provided in this section, the Court shall not try or determine any question of title between the petitioner and any person claiming title adversely to the trust.
 - 6. If a trustee without reasonable excuse fails to comply with an order made under sub-section (5)

Failure of trustee to comply with order under section 5.

with an order made under sub-section (5) of section 5, such trustee shall, without prejudice to any other penalty or liability which he may incur under any law for the

time being in force, be deemed to have committed a breach of of trust affording ground for a suit under the provisions of section 92 of the Code of Civil Procedure, 1908; and any such suit may, so far as it is based on such failure, be instituted without the previous consent of the Advocate-General.

7. (1) Save as hereinafter provided in this Act, any trustee of an express or constructive trust created or existing for a public purpose of a charitable or religious nature may apply by petition to the Court, within the local limits of whose jurisdiction any substantial part of the subject-matter of the trust is situate, for the opinion, advice or direction of the Court on any question affecting the management or administration of the

Sec. 6.—Sec. 6 says that once a breach of trust has been committed, by the trustee by his refusal to produce the accounts, a suit so far as it is based on such failure may be instituted without the previous sanction of the Advocate-General. It nowhere says by whom such a suit should be instituted. Once an order has been passed under sec. 6 of the Act, a suit under sec. 92 of the C.P. Code may be continued by other persons, even though the original plaintiff who applied under secs. 3 and 4 and secured the order from the District Court under sec. 6 of the Act has dropped out of the suit. 1933 Mad. 854=65 M.L.J. 690. A suit contemplated by sec. 6 of the Act does not become incompetent on the ground that one of the reliefs claimed therein cannot be said to be "based on such failure", i.e., the failure of the trustee to render accounts. The Court can entertain the suit so far as the other reliefs are concerned. 1933 M. 854=65 M.L.J. 690; see also 28 A.L.J. 1291.

SEC. 7.—When a trustee makes an application to the District Judge to obtain his opinion or advice a case is presented before the District Judge for decision. 1929 All. 581=27 A.L.J. 911 following 48 I.A. 280=44 M. 656 (P.C.).

trust property, and the Court shall give its opinion, advice or direction, as the case may be, thereon:

Provided that the Court shall not be bound to give such opinion, advice or direction on any question which it considers to be a question not proper for summary disposal.

- (2) The Court, on a petition under sub-section (1), may either give its opinion, advice or direction thereon forthwith, or fix a date for the hearing of the petition, and may direct a copy thereof, together with notice of the date so fixed, to be served on such of the persons interested in the trust, or to be published for information in such manner, as it thinks fit.
- (3) On any date fixed under sub-section (2) or on any subsequent date to which the hearing may be adjourned, the Court, before giving any opinion, advice or direction, shall afford a reasonable opportunity of being heard to all persons appearing in connection with the petition.
- (4) A trustee stating in good faith the facts of any matter relating to the trust in a petition under sub-section (1), and acting upon the opinion, advice or direction of the Court given thereon, shall be deemed, as far as his own responsibility is concerned, to have discharged his duty as such trustee in the matter in respect of which the petition was made.
- 8. The costs, charges and expenses of and incidental to any petition, and all proceedings in connection therewith, under the foregoing provisions of this Act shall be in the discretion of the Court, which may direct the whole or any part of any such costs, charges and expenses to be met from the property or income of the trust in respect of which the petition is made, or to be borne and paid in such manner and by such persons as it thinks fit:

Provided that no such order shall be made against any person (other than the petitioner) who has not received notice

Powers of District Judge under sec. 7—Extent of—Wakf property—Dispute between mutawallis—District Judge appointing defendant to collect rents—Suit against him by mutawallis—Notice under sec. 80, C.P. Code, not necessary. 165 I.C. 681=1936 A.L.J. 1112=1936 A. 801.

of the petition and had a reasonable opportunity of being heard thereon.

- 9. No petition under the foregoing provisions of this
 Act in relation to any trust shall be entertained in any of the following circumstances, namely;
- (a) if a suit instituted in accordance with the provisions of section 92 of the Code of Civil Procedure, 1908, is pending in respect of the trust in question;
- (b) if the trust property is vested in the Treasurer of Charitable Endowments, the Administrator-General, the Official Trustee or any society registered under the Societies Registration Act, 1860; or
- (c) if a scheme for the administration of the trust property has been settled or approved by any Court of competent jurisdiction or by any other authority acting under the provisions of any enactment.
 - 10. (1) In any suit instituted under section 14 of the

Power of Courts as to costs in certain suits against trustees of charitable and religious trusts. Religious Endowments Act, 1863, or under section 92 of the Code of Civil Procedure, 1908, the Court trying such suit may, if, on application of the plaintiff and after hearing the defendant and making such

inquiry as it thinks fit, it is satisfied that such an order is necessary in the public interest, direct the defendant either to furnish security for any expenditure incurred or likely to be incurred by the plaintiff in instituting and maintaining such suit, or to deposit from any money in his hands as trustees of the trust to which the suit relates such sum as such Court considers sufficient to meet such expenditure in whole or in part.

SEC. 10.—Under sec. 10 of the Charitable and Religious Trusts Act, the District Judge has the power to punish a mutawalli if, without any reasonable cause, the burden of proving which shall lie upon him, he fails to furnish statement of particulars of documents, or statement of accounts. This is purely a penal proceeding in the course of which the Judge may enquire as to whether a wakf is one to which the Act is applicable. But, till that stage arises, the Judge cannot hold any such enquiry and compet a mutawalli who is not admitting the applicability of the Act, to file accounts. 118 I.C. 717—1930 A. 81—52 A. 167.

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- (2) When any money has been deposited in accordance with an order made under sub-section (1), the Court may make over to the plaintiff the whole or any part of such sum for the conduct of the suit. Before making over any sum to the plaintiff, the Court shall take security from the plaintiff for the refund of the same in the event of such refund being sub-sequently ordered by the Court.
 - Provisions of the Code of Civil Procedure, 1908, relating dure to apply.
 - (a) the proof of facts by affidavit,
 - (b) the enforcing of the attendance of any person and his examination on oath,
 - (c) the enforcing of the production of documents, and
 - (d) the issuing of commissions,

shall apply to all proceedings under this Act and the provisions relating to the service of summonses shall apply to the service of notices thereunder.

- (2) The provisions of the said Code relating to the execution of decrees shall apply to all proceedings under this Act, and the provisions relating to Act.
 - Barring of appeals. 12. No appeal shall lie from any order passed or against any opinion, advice or direction given under this Act.

APPENDIX.—XIII.

BY-LAWS AND RULES.

(i) By-Laws of the Madras Hindu Religious Endowments Board.

(ii) Rules framed by the Government under the Act.

(iii) Account Rules.

(iv) Budget-Form of Budget framed by the Board.

(v) Rules for the calculation of income of Temples and Mutts.

(vi) Rules under Sec. 44-B (Resumption and regrant of Inams). CC-0. Jargamwadi Math Collection. Digitized by eGangotri (vii) Rules relating to Devadasis and their Inams.

(viii) Rules for Inquiries by the Board.

- (ix) Rules for Issue of commission for examination of witnesses.
- (x) Rules for destruction of records of the Board.

(i) By-Laws of the Madras Hindu Religious Endowments Board.

1. (Omifted by G.O. M.S. 131-P.H. dated 12-1-1945).

2. Any action taken by the President under Section 18-A shall be published on the notice boards of the office of the Board, and of the offices of the Assistant Commissioners in the area to which such action relates, in the district gazette of the district or districts concerned and in such other manner as the President may direct.

3. Save as otherwise provided by these by-laws, a Commissioner may exercise in respect of his division all or any of the powers conferred on the Board by the Act or the rules made thereunder including the taking of evidence except the powers conferred by sections 17 (a), 19 (1), 21 (2), 22 and 67 and the rules relating thereto:

Provided that a Commissioner may, if he is of opinion that any matter coming before him should be decided by a committee of the Board, refer such matter to the President who may consstitute such a Committee to deal with it.

- 4. The powers and duties conferred by the following sections and rules and by-laws 20 and 22 of these by-laws and any other matter referred to a Committee of the Board by a Divisional Commissioner under by-law 3 shall be exercised, performed and dealt with by a Committee of the Board constituted by the President, consisting of not less than two Commissioners of whom the Commissioner of the division concerned shall be one. If the Committee is unable to arrive at a decision (by majority), the matter shall be referred to and dealt with by the full Board:—
- (1) Section 3 (a)—Recommendation for the exemption of an endowment from the operation of the Act or for variation or alteration or cancellation of such exemption.

(2) Section 25—Staying, modifying, annulling or remitting the orders or proceedings of Assistant Commissioners.

(3) Section 26—The exercise of powers or discharge of duties of Assistant Commissioners in cases of default by them.

(4) Section 42—Appointment of temporary trustees in the case of maths and excepted temples.

(5) Section 54 (3)—Supersession of hereditary trustee who becomes subject to disqualifications.

- (6) Section 54 (4)—Determination of the disqualification of trustees.
 - (7) * * * (omitted).
- (8) Section 57—Settlement of schemes for non-excepted temples.
- (9) Section 62—Enquiry into the mismanagement of endowments of maths and excepted temples.
- (10) Section 63—Settlement of schemes for maths and excepted temples.
- (11) Section 65—Application to the Court for variation or cancellation of schemes settled by the Court.
- (12) Section 69 (1) and (2)—Determination of the percentage of the contribution to be recovered from math, temples and specific endowments attached to maths and temples and approval of rates of contribution leviable by temple committees.
- (13) Section 77 (1)—Application of the Act to endowments partly religious and partly secular.
- (14) Section 84—Settlement of disputes as to the application of the Act to maths and temples or as to whether a temple is an excepted temple or not.
- (15) Rules 4 and 7 of the rules appended to G.O. No. 2934, L. & M., dated 10th July 1926—Appeals to the Board against the President's orders reducing, suspending, removing or dismissing an officer or servant of the Board and confirmation, cancellation or alteration of regulations made by Committees.
- 5. If any Commissioner is, for any reason, unable to attend to his duties, his division shall be administered by the President or by such other Commissioner as the President may nominate.
- 6. All matters required to be enquired into and decided under items 1 to 13 of by-law 4 or under Section 53-A or 65-A by a Committee of the Board or the Full Board shall be inquired into and decided at a sitting of the Committee or of the Full Board.
- 7. The Board shall meet for the transaction of business at its office at least once in every month, and oftener if necessary, at the direction of the President. Notice of the day and time when the meeting is to be held and the agenda for that meeting shall ordinarily be circulated to all the Commissioners at least three clear days before the day fixed for the meeting. [***]. The minutes of the proceedings of each meeting shall be drawn up in English and entered in a book to be kept for that purpose; and shall be signed by the President or by the Commissioner who presides at such meeting.

- 8. (1) All moneys received by the Board, trustees, executive officers or managers of maths, temples and specific endowments attached to maths or temples shall be lodged in—
 - (i) the Imperial Bank of India, or
 - (ii) the Madras Central Urban Bank, or
 - (iii) a Post Office Savings Bank or
- (iv) such Central District Co-operative Banks as have been approved by the Registrar of Co-operative Societies for the investment of the funds of Local Boards and Municipal Councils constituted under the Madras Local Boards Act of 1920 and the Madras District Municipalities Act of 1920, respectively.
- (2) Any such moneys not required for immediate expenditure shall be invested:—
 - (a) in one or other of the following securities, namely:-
- (i) promissory notes, debentures, stock or other securities of the Government of India;
- (ii) stock or debentures of, or shares in Railway or other Companies, the interest wherein shall have been guaranteed by the Secretary of State for India in Council;
- (iii) debentures or other securities for money issued by or on behalf of, any municipal body under the authority of any Act of a Legislature established in British India; or
 - (b) in a Post Office Savings Bank; or
- (c) in fixed deposits for periods not exceeding three years in-
 - (1) the Imperial Bank of India, or
 - (2) the Madras Central Urban Bank, or
- (3) such Central District Co-operative Banks as have been approved by the Registrar of Co-operative Societies for the investment of the funds of Local Boards and Municipal Councils constituted under the Madras Local Boards Act of 1920 and the Madras District Municipalities. Act of 1920, respectively, or
- (d) In the case of such moneys received by Trustees in the purchase or in the first mortgage of immovable property with the previous sanction of the Board.
- 9. All applications and appeals to the Board shall be written, type-written, or printed fairly and legibly, on substantial white foolscap folio paper with an outer margin about 2 inches wide and an inner margin about 1 inch wide and separate sheets shall be stitched together book-wise. Writing or printing may be on both sides of the paper.
- 10. All applications and appeals to the Board and the Assistant Commissioners shall be presented in person by the parties

or any of them or their duly authorised vakils at the office of the Board or that of the Assistant Commissioner concerned as the case may be, or sent by registered post to the Secretary to the Board or the Assistant Commissioner concerned as the case may be.

11. An original application to the Board or Assistant Commissioner shall be headed with a cause-title in the following form. The names of the parties shall be separately numbered and described as applicants and respondents:—

Before the Board of Commissioners for Hindu Religious Endowments, Madras [or before the Assistant Commissioners for

Hindu Religious Endowments.]

Application No. of 19 .

Under section of Madras Act II of 1927.

Between :-

Applicant (s)

and

Respondent (s)

12. A memorandum of appeal to the Board shall be headed with a cause-title setting out the name of the authority against whose decision the appeal is preferred, the serial number and date of such decision and the names of the parties separately numbered and described as appellants and respondents. The appeal shall be accompanied by three copies of the order appealed against, at least one of which shall be a certified copy. The cause-title shall be in the following form:—

Before the Board of Commissioners for Hindu Religious Endowments, Madras.

Appellate Jurisdiction.

Appeal No.

of 19

Under section of Madras Act II of 1927.

Between :-

Applicant (s)

and

Respondent (s)

From the order No.

the Trustee of Temple in

Math

13. A miscellaneous application to the Board or an Assistant Commissioner arising from or connected with an original application or an appeal to it shall be headed with a cause-title in the following form:—

Before the Board of Commissioners for Hindu Religious Endowments, Madras.

Mis. Application No. of 19
O. A. No. of 19
Appeal No. of 19

Under

Between :-

Applicant (s).
Appellant (s).

and

Respondents (s).

14. Such application or appeal shall state in distinct paragraphs the reliefs sought and the grounds on which they are sought and shall be verified at the foot in the manner provided for a plaint in the Civil Procedure Code, 1908.

15. Copies of such application or appeal shall be served upon all parties whose rights or interests will be affected by any order that may be passed therein. Service shall be effected in the manner provided by the rules under Madras Act II of 1927 for the service of notices on trustees of religious endowments in respect of which a scheme is to be settled.

16. The applicant or the appellant shall along with the application or appeal pay into the office of the Board or an Assistant Commissioner the costs of serving the notice on all the respondents at the rate of annas 8 per respondent and furnish as many true copies of the application or appeal as there are respondents together with three additional copies for the use of the Board or an Assistant Commissioner.

At the time of each adjournment the applicant or appellant shall also pay the costs of re-service of notices at the same rate

as for the service of original notices.

16-A. (1) Documents Produced in proceedings before the Board or an Assistant Commissioner shall be accompanied by an accurate list thereof in the form below. The serial number of the document, the number of the proceeding in which the document is produced and the name of party or the vakil producing the document shall be endorsed on the docket of each document:—

CAUSE TITLE.

List of documents filed by

Serial Date of Parties to Description of number. document. the document.

document.

(Sd.)-

Applicant or respondent or pleader for

Appellant

Applicant or respondent

Appellant

(2) No document which is torn or incomplete or in a decayed condition shall be received.

(3) No document which is on cadjan shall be received unless it is accompanied by a copy attested by the party producing

it to be a true copy.

Note.—No document which is liable for stamp duty under the Indian Stamp Act shall be received unless it bears the required stamp duty.

16-B. When a party to a proceeding before the Board or an Assistant Commissioner is once served with notice and appears or fails to appear, no further notice shall be issued to him except when the proceeding is taken up on a date prior to the date to which it is posted and is re-posted to another date or unless the issue of a fresh notice is required by the Act or the rules.

17. Any communication from the Board to the Local Govern-

ment shall be made by the President.

- 18. Final orders and decisions of the Board passed on applications or appeals presented to it or otherwise under section 17 (b), 18, 25, 26, 42, 43 (3) and (4), 53 (1) and (3), 53-A, 54 (3) and (4) and 55 (4), 56 (4), 57, 62, 63, 65-A (4), 65-A (5) (b), 66, 67, 69, 70, 73 (1), 76 (1), 77 (1) and 84 (1) of the Act shall be communicated to the parties concerned by the Secretary to the Board. Final orders and decisions of an Assistant Commissioner passed on applications or appeals under section 42, 43 (2), 53 (1), 56 (3), 66 and 76 (1) of the Act or under any power vested in him by an order of delegation shall be communicated by the Assistant Commissioner to the parties concerned. Final orders and decisions passed by the Board or an Assistant Commissioner on miscellaneous applications shall be so communicated only at the request of the parties and on payment by them of postal charges (either by remittance of money or postal stamps) for the transmission of such communications.
- [19. Delegation of the Board's powers and duties shall be made by an order in writing.
- 20. The Board shall have the power to vary or cancel an order of delegation and such an order shall be in writing.
- 21. An order delegating powers and duties of the Board to an Assistant Commissioner or varying or cancelling the delegation shall be published by affixture to the notice boards of the office of the Board and of the Assistant Commissioners.

- 22. Any proceeding taken and any order passed by an Assistant Commissioner shall be subject to the powers vested in the President of the Board and the Board under sections 24 and 25 respectively.] (Substituted for old by-laws 19 to 24).
- 25. The fees for the grant of a copy of any proceeding or record of the Board or of any Assistant Commissioner shall be six annas for every 100 words or fraction thereof whether the proceeding or record is in English or in a vernacular. The parties applying for copies shall also remit the necessary postal charges for the transmission of the orders on the copy applications and of the copies, if any, ordered to be supplied. If the copying charges called for are not received by the Board or Assistant Commissioner as the case may be within ten days of the issue of the communication calling for change, the copy application will be struck off. No action will be taken on any copy application from a person who is not a party to the proceedings unless the applicant or his agent files an affidavit setting out how the applicant is interested in the subject-matter of the proceeding or record for which copy is applied for and for what purpose the copy is required.

Note.—Four figures shall be reckoned as one word.

26. Every person applying for a copy of any proceedings or record which appertains to a year previous to the current calendar year shall, besides the copying charges, pay along with his application search fees on the following scale:—

Rs. A. P.

Rs. A. P.

(a) Fee payable for the first document or entry applied for or if only one document or entry is applied for, then for that document or entry ... 0 8 0

(b) Fee payable for every document or entry other than the first included in the same application and connected with the same subject

Note.—Only one search fee of eight annas need be paid for all papers filed together and forming a single record.

(c) When the party does not know to which of two or more years a document or entry belongs, the fee for searching the records of every year other than the first shall be ... 0 4

- 27. Copies or extracts of proceedings or records of the Board or an Assistant Commissioner shall be certified by such officer of the Board as may be authorised by the President to do so.
- 28. (1) The President or such officer of the Board as may be authorised by him in this behalf, may, on the application of

any party grant permission for the inspection of proceedings of the Board or the records connected therewith.

- (2) The application for inspection shall specify the number of the proceedings and such information as may be necessary for identifying the records required for inspection.
- (3) Every person applying for inspection shall pay a fee of Re. 1/— for each day or part of a day spent on inspection of each proceeding or the record connected therewith.
- 29. The time for an appeal under section 56 (4) of the Act shall be one month from the date of receipt by the trustee of the order appealed against. No appeal shall be entertained unless it is presented within one month from the date of such receipt.
- 30. Receipts for money paid to the Board shall be granted by the head of the Accounts Section of the office of the Board. Temporary receipts may be granted by the Assistant Commissioners and the Inspecting Officers of the Board for money paid to them.
- (ii) RULES FRAMED BY THE GOVERNMENT UNDER THE MADRAS HINDU RELIGIOUS ENDOWMENTS ACT.

(G. O. No. 2934, L. & M., dated 10-7-26.)

- 1. The draft of a notification proposed to be issued under sub-section 1 of section 10 shall be published in the Fort St. George Gazette in English. It shall be published in English and in the vernacular in the district gazette of the district over which jurisdiction is extended or from which jurisdiction is withdrawn.
- 2. No post carrying a maximum salary of over Rs. 250 per mensem shall be created by the Board without the sanction of the Government nor shall the maximum salary of any post be increased by the Board to over Rs. 250 per mensem without such sanction.
- 3. An inquiry in judicial form shall precede every order imposing any substantive punishment, other than a fine, on any officer or servant. The charge or charges, against the officer or servant shall be reduced to writing and communicated to him. The evidence against him shall be brought on record and explained to him and he shall be allowed reasonable time and opportunity to rebut the evidence adduced against him and to furnish in writing such explanation as he may have to offer. The order passed after such inquiry shall contain a statement of the charge or charges, the explanation of the officer or servant, an examination of the evidence for and against him and the finding on each charge. A copy of the order shall without delay be communicated to the officer or servant.

Appeal.

4. [Every officer or servant of the Board shall have a right of appeal to the Government against any order of the President reducing, suspending, removing or dismissing him from service.] (See G. O. No. 1048, L.S.G., dated 15-3-1937, Fort St. George Gazette, dated 16th March, 1937, Pt. I-A, p. 150; G. O. No. 3460, P. H., dated 19-10-1938, Fort St George Gazette, Pt. I-A, dated 13th December, 1938, p. 822.)

No appeal under this rule shall be entertained unless it is presented within one month of the date of receipt by the officer or servant of the order appealed against.

Explanation.

The termination of the service of an officer or servant by the issue of a notice not on the ground that this post is no longer necessary but on the ground that he has been unsatisfactory in his work or conduct is a removal within the meaning of this rule.

In the case of employees on probation the termination of their services during the period of their probation does not amount to any punishment and there is therefore no right of appeal.

Qualifications.

5. No person shall be eligible for appointment to any post under the Board carrying a salary of Rs. 40 per mensem or more unless he is qualified under the Public Service Natification for the time being in force for entry into the superior service under Government:

Provided that the Board may exempt any person from possessing the above qualification, the President being competent to exempt persons for a period not exceeding six months.

- 6. No person shall be appointed as head accountant in the office of the Board unless he has passed the Government Special Test Examination in the Account Test or possesses the Government diploma in Accountancy or other equivalent qualification.
 - 7. * * * (Omitted G.O. M.S. 3490, P.H. dated 16-12-1944).
 - 8. The time allowed for an appeal-
- (a) by any office-holder or servant of a temple other than an excepted temple against the order of a trustee.
- (b) by a hereditary office-holder or servant of a temple other than an excepted temple against the order of an Assistant Commissioner, and
- (c) by any office-holder or servant of an excepted temple against the order of a trustee, shall be in the case of appeals to the Assistant Commssioner one month and in the case of appeals

to the Board two months from the date of receipt by the office-holder or servant of the order appealed against.

- ¹8-A. Where in the case of an appeal referred to in rule 8 the whole or any part of the fee required to be paid under Schedule II read with section 81 of the Act has not been paid, the Assistant Commissioner, or the Board as the case may be, may, in his or its discretion, at any stage allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such fee, and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee has been paid in the first instance.
- 9. The consultation required under sub-sections (1) and (2) of section 57 and under sub-sections (1) and (3) of section 63 shall be made in the following manner. The Board shall by notice inform the trustee and the persons having interest of its intention to frame, modify or cancel a scheme of administration for the endowments of a temple or math or for a specific endowment attached to a temple or math and call upon them to submit any representations they may wish to make before a date to be specified in such notice. The notice shall be sent by registered post to trustee. The affixing of copies of notices to the notice-boards or front doors of the temples or maths concerned shall be deemed to be sufficient intimation to the persons having interest. All representations submitted in time by trustees, or persons having interest shall be taken into consideration by the Board in settling, modifying or cancelling the scheme.
- 10. Every order of the Board settling, modifying or cancelling a scheme under section 57 or section 63 shall be published in the notice board of the temple or math affected by the order and in the district gazette of the district or districts in which the temple or math or the temple or math to which the specific endowment is attached is situated; where the order affects a temple or specific endowment attached to a temple it shall also be published in the notice board of the Assistant Commissioner, if any, within whose jurisdiction the temple affected is situated.
- 11. Inquiries by the Board under the Act shall be made either by all the Commissioners sitting together or when so authorised by the Board in a specific case or generally by by-laws framed under clause (d) of sub-section (1) of section 19 by any one or more of them.
- 12. At any stage during the course of an inquiry the Board may, of its own motion or at the request of any party to an inquiry, issue summons to any person to give evidence as a witness or to produce any document in his possession and may examine him as a witness or require him to produce such document.

⁽¹⁾ Added by G.O. No. 705, L. & M. dated 22-2-1930.

- 13. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which and the day on which he is required to attend and also whether his attendance is required for the purpose of giving evidence or to produce a document or for both purposes; and any particular document, which the person summoned is called on to produce shall be described with reasonable accuracy.
- 14. Any person present at the place of inquiry may be required by the Board to give evidence or to produce any document then and there in his possession or power.
- 15. Whoever is summoned to appear and give evidence in an inquiry shall attend at the time and place mentioned in the summons for that purpose and whoever is summoned to produce a document shall either attend to produce it or cause it to be produced at such time and place or cause such document to be sent to the Board by registered post so as to reach it at such time and place.
- 16. The summons shall be deemed to have been duly served on the person summoned if it is sent by registered post and an acknowledgment or refusal thereof has been received.
- 17. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which the evidence is required.
- 18. A person summoned and attending shall, unless the Board otherwise directs, attend at each hearing until the inquiry is completed.
- 19. A person summoned either to give evidence or to produce a document shall, along with summons, be given such batta and travelling allowances as may be fixed by the Board.
- 20. It shall be competent to the Board to allow in addition any reasonable remuneration to any expert who may be summoned to give evidence for the time occupied both in giving evidence and in performing any work of an expert character necessary for or connected with the inquiry.
- 21. No summons shall be issued at the instance of a party unless the party first pays to the Board such sum, as in its opinion is sufficient to defray the travelling and other expenses of the person summoned in passing to and from the place of inquiry and for one day's attendance and the remuneration payable, if any.
- 22. Where it is necessary to detain the person summoned for a longer period than one day the party at whose instance he was summoned shall pay to the Board such sum as it may fix to defray the expenses of such detention for such further period and in default of such deposit the Board shall discharge the person summoned without requiring him to give evidence.

- 23. The petitioner has the right to begin unless the respondent admits the facts alleged by the petitioner and contends that either in point of law or on some additional facts alleged by the respondent the petitioner is not entitled to any part of the relief which he seeks, in which case the respondent has the right to begin.
- 24. (1) On the day fixed for the hearing of the inquiry or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.
- (2) The other party shall then state his case and produce his evidence if any and may then address the Board generally on the whole case.
- (3) The party beginning may then reply generally on the whole case.
- 25. Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence, on those issues or reserve it by way of answer to the evidence produced by the other party; and in the later case, the party beginning may produce evidence on those issues after the other party has produced all his evidence and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning shall then be entitled to reply generally on the whole case.
- 26. The evidence of the witnesses in attendance shall be taken orally in open office in the presence and under the personal direction of a Commissioner of the Board.
- 27. It shall not be necessary to take down the evidence of the witnesses in writing at length but as the examination of each witness proceeds, a memorandum of the substance of what each witness deposes, shall be written and signed by the presiding Commissioner or by the Commissioner as the case may be and shall form part of the record.
- 28. (1) Where the Commissioner of the Board is unable to make a memorandum as required in the above rule, he shall cause the reason of each disability to be recorded and shall cause the memorandum to be made in writing from his dictation in open office.
- (2) Every memorandum so made shall form part of the record.
- 29. (1) Where a witness is about to leave the jurisdiction of the Board or other sufficient cause is shown to the satisfaction of the Board why his evidence should be taken immediately the Board may, on the aplication of any party or of the witness, at any time after the institution of the inquiry, take the evidence of such witness in the manner hereinbefore provided.

- (2) Where such evidence is not taken forthwith and in the presence of the parties, if any, such notice as the Board thinks sufficient of the day fixed for the examination shall be given to the parties, if any.
- 30. The Board may at any stage of an inquiry recall any witness who has been examined and may put such questions to him as they think fit.
- 31. The Board may at any stage of an inquiry inspect any property or thing concerning which any question may arise.
- 32. The Board may order that any fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as it considers reasonable: provided that where it appears to the Board that any party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by the affidavit.
- 33. (1) Upon any application evidence may be given by affidavit, but the board may at the instance of either party order the attendance for cross-examination of the deponent.
- (2) Such attendance shall be at the place of inquiry, unless the deponent is exempted from personal appearance therein or the Board otherwise directs.
- 34. (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted provided that the grounds thereof, are stated.
- (2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter or copies of or extracts from documents, shall (unless the Board otherwise directs) be paid for the party filing the same.
- 35. Any person who is required to appear under rules 12, 18 or 30 or to produce a document shall, on failure to do so, unless he proves to the satisfaction of the Board that such failure was not wilful but arose from circumstances beyond his control, be liable to a penalty not exceeding Rs. 100 for every such failure. The Court shall on the application of the President of the Board recover the fine imposed as if a decree had been passed for the fine by the Court against the person concerned.

RULES FOR RETENTION AND RETURN OF DOCUMENTS BY THE HINDU RELIGIOUS ENDOWMENTS BOARD.

(G. O. No. 3388, L. &M., dated 22nd August, 1930, Local Self-Government Department.)

In exercise of the powers conferred by sub-section (1) and clause (e) of sub-section (2) of section 71 of the Madras Hindu

Religious Endowments Act, 1926 (Act II of 1927), read with section 15 of the Madras General Clauses Act, 1891 (Act I of 1891), the Governor acting with Ministers is hereby pleased to make the following amendment to the rules framed under the Madras Hindu Religious Endowments Act, 1923 (Act I of 1925) and published with the notification of the Local Government in the L. & M. Department No. 757, at pages 239 to 243 of Part I-A of the Fort St. George Gazette, dated the 20th July, 1926:—

AMENDMENT.

After rule 35 of the said rules the following shall be added as rules 35-A to 35-N:—

- 35-A. (1) Where a petitioner bases his claim upon a document in his possession or power, he shall produce it before the Board when the petition is presented and at the same time deliver the document or a copy thereof to be filed with the petition.
- (2) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in the list to be added or annexed to the petition.
- 35-B. Where any such document is not in the possession or power of the petitioner, he shall, if possible, state in whose possession or power it is.
- 35-C. (1) A document which ought to be produced before the Board by the petitioner when the petition is presented, or to be entered in the list to be added or annexed to the petition, and which is not produced or entered accordingly, shall not, without the leave of the Board, be received in evidence on his behalf at the hearing of the petition.
- (2) Nothing in this rule applies to documents produced for cross-examination of the respondent's witnesses, or in answer to any case set up by the respondent or handed to a witness merely to refresh his memory.
- 35-D. (1) The parties or their pleaders shall produce, at the first hearing of the petition, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in the office of the Board, and all documents which the Board has ordered to be produced.
- (2) The Board shall receive the documents so produced: provided that they are accompanied by an accurate list thereof prepared in such form as the Board directs.
- 35-E. No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 35-D shall be received

at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Board for the non-production thereof; and the Board receiving any such evidence shall record the reasons for so doing.

- 35-F. The Board may at any stage of the petition reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.
- 35-G. (1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the petition the following particulars, namely:—
 - (a) the number and title of the petition,
 - (b) the name of the person producing the document,
 - (c) the date on which it was produced, and
- (d) a statement of its having been so admitted; and the endorsement shall be signed or initialed by the presiding Commissioners or by the Commissioner as the case may be.
- (2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted, for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialed by the presiding Commissioners or by the Commissioner, as the case may be.
- 35-H. (1) Save in so far as is otherwise provided by the Banker's Books' Evidence Act. 1891, where a document admitted in evidence in the petition is an entry in a letter-book or a shon-book or other account in current use, the party on whose behalf the book or account is produced may furnish a copy of the entry.
- (2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to a person other than a party on whose behalf the book or account is produced, the Board may require a copy of the entry to be furnished—
- (a) where the record, book or account is produced on behalf of a party then by that party, or
- (b) where the record, book or account is produced in obedience to an order of the Board acting of its own motion, then by either or any party.
- (3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Board shall, after causing the copy to be examined, compared and certified, in the manner mentioned in sub-rule (4), mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

- (4) The Board or such officer as it appoints in this behalf, shall mark the document for the purpose of identification and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the person producing it and cause the copy to be filed.
- 35-I. Where a document relied on as evidence by either party is considered by the Board to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of sub-rule (1) of rule 35-G, together with a statement of its having been rejected, and the endorsement shall be signed or initialed by the presiding Commissioners by the Commissioner, as the case may be.
- 35-J. (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 35-H, shall for part of the record of the petition.
- (2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them:

Provided that no document shall be returned which by

force of the order has become wholly void or useless.

- 35-K. Notwithstanding anything contained in rule 35-H or rule 35-J, the Board may, if it sees sufficient cause, direct any document or book produced before it in any petition to be impounded and kept in the custody of an officer of the Board, for such period and subject to such conditions as the Board thinks fit.
- 35-L. (1) Any person, whether a party to the petition or not, desirous of receiving back any document produced by him in the petition and placed on the record shall, unless the document is impounded under rule 35-K, be entitled to receive back the same—
- (a) where the petition is one in which the order passed is not liable to be questioned by a suit or application in a Court, when the petition has been disposed of, and
- (b) where the petition is one in which the order passed is so liable to be questioned in a Civil Court, when the Board is satisfied that the time for filing a suit or application has elapsed and that no suit or application has been filed or, if a suit or application has been filed, when such suit or application has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so:

Provided also that no document shall be returned which, by force of the order has become wholly void or useless.

- (2) On the return of a document admitted in eyidence, a receipt shall be given by the person receiving it.
- (3) Every application under the first proviso to sub-rule (1) shall be made by a verified petition setting forth facts justifying the immediate return of the original and the Board may make such order as it thinks fit for costs of any or all the parties to the application, including any costs "incidental to the preparation of the certified copy to be substituted for the original" and may further direct that any party against whom any order for costs is made shall have such costs, if paid, "included as costs in the cause".
- 35-M. (1) The Board may of its own motion and may, in its discretion, upon the application of any of the parties to a petition, send for, either from its own records or from any other Court, the record of any other petition or proceeding, and inspect the same.
- (2) Every application made under this rule shall (unless the Board otherwise directs) be supported by affidavit showing how the record is material to the petition in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.
- (3) Nothing contained in this rule shall be deemed to enable the Board to use in evidence any document which under the law of evidence would be inadmissible in the petition.
- 35-N. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.
- 36. Every order of the Board under section 67 shall be published in the notice board of the temple or math affected by the order and in the District gazette of the district or districts in which the temple or math is situated. Where the order affects a temple or a specific endowment attached to a temple it shall also be published in the notice board of the Assistant Commissioner, if any, within whose jurisdiction the temple affected is situated.
- 37. The amount of the costs, expenses or contributions payable by a temple, math or specific endowment under section 68 or section 69, shall be communicated to the trustee thereof or where there are more trustees than one to the managing trustee, if any, and if there is no managing trustee, to any one of the trustees, by a notice which shall be delivered in person or sent by registered post, acknowledgment due. The time allowed by the Board, under sub-section (2) of section 70, for the payment of the amount so

demanded shall be calculated from the date of receipt of such notice by the trustee aforesaid or in the case of his refusal to receive the notice, from the date of such refusal.

Explanation.—Where the trustee is evading service of the notice or where the service cannot for any other reason be effected on him in the manner aforesaid, the notice may be served on the executive officer appointed under the Act or if there is no executive officer, or the archaka or other person who is in charge of the math, temple or specific endowment concerned, and such service shall be deemed to be sufficient service on the trustee.

- 37-A. The working hours for the President and other Commissioners and for the staff of the Board shall be the same as those fixed for employees in the Madras Government Secretariat.
- 37-B. The tours of the President shall be subject to the control of the (Government), and those of the other Commissioners shall be subject to the control of the President.
- 37-C. Powers conferred on the Board by sections 57 (1-A), 63 (1-A) or 65-C of the Act or by any scheme settled by the Board or by any Court, to appoint or to remove, dismiss or otherwise punish, a paid executive officer, manager or superintendent for any temple or math or any endowment or endowments connected therewith shall, notwithstanding anything contained in the bylaws made by the Board, be exercised by an individual Commissioner or by a Committee of the Board, subject to confirmation by the full Board.

Leave and Leave Salary.

- 38. The President and Commissioners [* *] shall be eligible for casual and other leave (and leave salary) to the same extent and subject to the same conditions and restrictions as Government servants drawing the same pay.
- 39. A Commissioner may, subject to a report to the President, avail himself of casual leave. Applications for any other kind of leave shall be submitted to the (Government) for sanction through the President who may sanction or refuse the same. The President may, subject to a report to the (Government), avail himself of casual leave. Application for any other kind of leave for the President shall be made to the (Government) who may sanction or refuse the same.
- 40. All applications for any kind of leave from officers and servants of the Board shall be made to the President who may sanction or refuse the same.

Conditions of Service.

40-A. (1) Save as otherwise provided in the Act in these rules or in any other rules in force for the time being, the condi-

tions of service of all officers and servants of the Board shall be the same as those prescribed for Government servants of similar standing and status, in the Fundamental Rules and the subsidiary rules thereunder as for the time being in force.

- (2) Any power assigned to the head of the department in the provisions applicable to such Government servants shall be exercised by the President of the Board.
- (3) In the case of officers and servants employed on or after the 4th September, 1933, the Madras Leave Rules, 1933, as for the time being in force shall apply.
- (4) In these rules the expression 'superior service' has the same meaning as in the Fundamental Rules.
- 40-B. No order sanctioning a personal allowance or an advance increment to any officer or servant of the Board shall be passed without the previous sanction of the (Government).
- 40-BB. No person whose age exceeds 35 years shall be appointed to any post in the superior service of the Board without the previous sanction of the (Government).
- 40-C. (1) No person who has been dismissed from the service of Government or of any local authority shall be employed in the service of the Board except with the previous sanction of the (Government).
- (2) No person who has been or is convicted of a political offence or of an offence involving moral turpitude shall be employed or retained in the service of the Board except with the previous sanction of the (Government):

(Provided that no person shall be disqualified for appointment under the Board by reason only of his conviction for an offence committed in furtherance of the non-co-operation or civil disobedience movement).

- 40-D. (1) Every appointment to a post in superior service shall be subject to probation for a period of two years on duty within a continuous period of three years. Such probation may be either in said post or in any other post with similar duties.
- (2) The appointing authority may, before the expiry of the period of probation, for reasons to be specified in writing, terminate the probation of any person and revert him to his permanent post if he is already a permanent officer or servant or discharge him from the service of the Board in other cases.
- (3) The order in which persons who are on probation and persons who have completed their period of probation shall be discharged or reverted for want of vacancies shall be as follows;—

First, the persons who are on probation, in order of juniority, and

Second, the persons who have completed their period of probation, in order of juniority.

Explanation.—For the purposes of this sub-rule, juniority as between persons who are on probation shall be determined by the total length of their service which counts for probation, and as between persons who have completed their period of probation, by the dates on which the probation was completed.

(4) Persons who have been discharged or reverted for want of vacancies under sub-rule (3) shall be re-appointed as vacancies arise in the inverse of the order laid down in that sub-

rule:

Provided that nothing contained in this sub-rule shall be deemed to give any such person a right to be reappointed in preference to another who has been discharged or reverted later under clauses (1), (3) or (4) of sub-rule (a) of rule 40-E and who is entitled to reappointment under rule 40-G.

- (5) A person who has completed his period of probation shall be confirmed at the earliest opportunity. Where there are two or more such probationers, the probationer who completed his period of probation earliest shall be confirmed first.
- 40-E. (a) When any post or posts are abolished, persons shall be selected for discharge or reversion from the unit concerned in the following order, namely:—
- (1) acting persons who have not completed their period of probation in order of juniority;
- (2) persons who have attained the age of fifty-five years, in order of age, the oldest being discharged or reverted first;
- (3) Persons who have completed their period of probation, in order of juniority; and
- (4) permanent officers or servants not coming under category (2) in order of juniority:

Provided that no officer or servant shall be discharged on the abolition of any appointment unless he cannot be provided for otherwise.

Explanation (1).—An appointment the pay of which is reduced shall be deemed to be abolished within the meaning of this sub-rule.

Explanation (2).—The unit for puroses of selection of persons for discharge or reversion shall be the group of holders of posts of the same grade or of higher grades, if any, to which transfers, appointments or promotions are normally made by the same authority.

Explanation (3).—For the purposes of this sub-rule juniority or seniority shall be determined—

- (i) in cases falling under clause (1), according to the total length of service which counts for probation;
- (ii) in cases falling under clause (3), according to the dates on which the probation was completed; and
- (iii) in cases falling under clause (4), according to the position in the service list.
- (b) Where a person to be discharged under clause (4) of sub-rule (a) holds a post in a grade to which promotions are normally made from a lower grade, he shall, if he so desires, instead of being discharged, be reverted to such lower grade and be placed at the top thereof and sub-rule (a) shall be applied to the selection of persons for discharge or reversion from such lower grade.
- 40-F. Any person who is discharged or reverted under subrule (a) of rule 40-E shall, within six months after the date on which he was informed of the order of discharge or reversion, be entitled to appeal against such order on the ground that that subrule has not been complied with, to the authority to whom an appeal from an order dismissing him would lie.
- 40-G. When candidates are required for appointment to any post in a unit, preference shall be given to persons discharged or reverted from such posts in the unit otherwise than under clause (2) of sub-rule (a) of rule 40-E, so long as such persons desirous of such appointment are available, appointments being made in the inverse of the order in which they were discharged or reverted from such unit:

Provided that in the case of a person who did not on the date of his discharge or reversion hold the post substantively, he possesses the qualifications, if any, prescribed for the post or has, before discharge or reversion been exempted by competent authority from the possession of such qualifications:

Provided also that if the appointing authority considers it undesirable that any specified person should be appointed under this rule, such authority may, for reasons to be recorded in writing and communicated to the person concerned, refuse to appoint him; and an appeal shall lie from such refusal as if it were an order of dismissal:

Provided further that nothing contained in this rule shall be deemed to give any person discharged or reverted under clause (1) or (3) or sub-rule (a) of rule 40-E, a right to be reappointed in preference to another who has been discharged or reverted later under sub-rule (3) of rule 40-D and who is entitled to reappointment under sub-rule (4) of that rule.

- 40-H. Any person eligible for re-employment under rule 40-G shall be entitled to appeal to the authority to whom an appeal from an order dismissing him would he, on the ground that some person who should have been re-employed later has been re-employed before him. Such appeal shall be preferred, within six months after the date on which such other person was re-employed.
- 40-I. Reasonable notice shall be given to an officer or servant in permanent employ before he is discharged under rule 40-E. It, in any case, notice of at least three months is not given and the officer or servant has not been provided with other employment on the date on which his services are dispensed with, a compensation gratuity not exceeding his emoluments, for the period by which the notice actually given falls short of three months shall, with the sanction of the Board, be paid to him.
 - 40-J. (1) Unless it contains an express statement to the contrary, an order for the abolition of an appointment or for the reduction of the emoluments of an appointment shall not be brought into operation before the expiry of three months after notice has been given to the officer or servant whose services are to be dispensed with on such abolition or reduction.
 - (2) The President shall be responsible for avoiding any unnecessary delay in giving such notice.
 - (3) In the case of an officer or servant on leave, the orders shall not be brought into operation before the leave expires.

Travelling allowance.

41. Travelling allowance may be drawn by the President and Commissioners of the Board and by the officers and servants of the Board in accordance with the Madras Travelling Allowance Rules for the time being in force:

Provided that the President and the Commissioners of the Board shall not be placed below Grade III under the Madras Travelling Allowance Rules whatever the salary drawn by them may be.

Budget.

42. The Board shall in the month of (March) in each fash year frame budget (in the form contained in the schedule annexed to these rules) show the probable receipts and the expenditure which it proposes to incur during the following fash year and shall submit a copy of the budget to the Government before the end of (March). The budget shall contain provision adequate in the opinion of the Government for the due discharge of all liabilities in respect of loans contracted by the Board and for the maintenance of a working balance; and if the budget as submitted to the Government fails to make these provisions the Govern

ment may alter any part of it so as to ensure that such Provisions are made.

43. As soon as may be after the first day of (August) and not later than the first day of (October) in each falsi year the Board shall submit to Government-

a report of its administration during the proceeding fasli year in such form and with such details as the (Government) may direct.

[a review of the administration of the committees under its control during the preceding fasli year with such details as the (Government) may direct.]

44. [e a al Omitted.

- The time within which an application to the Court under sub-section (2) of section 77 may be made to modify or set aside the order of the Board determining what portion of any endowment or property or of the income therefrom shall be allocated to religious uses shall be three months from the date of the Fort St. George Gazette in which the order shall be published.
- 45-A. The Asst. Commissioner may summon any person to attend before him and to give evidence or produce any document in his possession, as the case may be, in respect of any enquiry or other proceedings under the Act and may examine him, as a witness or require him to produce such document; and the procedure laid down in these rules for summoning the attendance of witnesses and the production of documents before the Board shall be followed as far as it can be made applicable.
- 45-B. Any person who is required to appear or to produce a document under rule 45-A shall on failure to do so, unless he proves to the satisfaction of the Asst. Commissioner that such failure was not wilful but arose from circumstances beyond his control be liable to such penalty not exceeding Rs. 50 for every such failure as may be imposed by the Asst. Commissioner. said order shall be subject to confirmation by the Board. The Court shall on application by the President of the Board recover the fine imposed as if a decree had been passed for the fine by the Court against the person concerned.
- 46. In these rules and the schedule annexed thereto, unless there is anything repugnant in the subject or context Government means "The Government of Madras".

(Schedules and forms-omitted).

[APP. XIII

(iii) ACCOUNT RULES.

(G.O. No. 1249, L. & M., dated 17-3-1928.)

Receipts.

- 1. All transactions to which any commissioner or employee of the Hindu Religious Endowments Board in his official capacity is a party, shall be brought into account and all moneys received by such commissioner or employee shall be paid in full without delay into a Treasury or Bank with which the Board has transactions to be credited to the appropriate account of the Board.
- 2. The appropriation of receipts to expenditure shall, as a rule, be avoided.
- 3. Any officer of the Board authorized by it in this behalf shall grant receipts for all moneys received by him for credit to the Board's funds. A counterfoil receipt book bearing printed machine numbers shall be maintained for the purpose.
- 4. Recoveries of over-payments relating to the current year shall be shown as abatement of charges of the accounts concerned. If the over-payment relates to previous years, the accounts of which have been finally closed, the recoveries will be taken as direct receipts to the accounts concerned.

.Expenditure.

- 5. Payments from Board's funds shall be made by cash or cheque. Cheques shall not be issued for sums less than Rs. 10.
- 6. No money shall be withdrawn from the Bank or Treasury unless it is required for immediate payment.
- 7. Money indisputably payable shall never be left unpaid, and money paid shall, under no circumstances be kept out of the accounts a day longer than is absolutely necessary.
- 8. Any person having a claim against the Board shall present his voucher duly and stamped.
- 9. Printed forms of vouchers in English shall be adopted as far as possible. When the use of a purely vernacular account or voucher is unavoidable, a brief abstract shall be endorsed in English under the signature of the officer who prefers the claim stating the amount, the name of the payee and the nature of the payment. All vouchers shall be filled in and signed in ink. The amount of vouchers shall be written in figures as well as in words. All corrections and alterations in the total of a voucher shall be attested by the dated initials of the person signing the receipt.
- 10. Receipts for all sums exceeding Rs. 20 either by cash or cheque shall be stamped. The correct head of classification accor-

ding to the budget shall be recorded on each voucher by the drawing officer.

Establishment.

- 11. A detailed schedule of permanent establishment shall be maintained up to date. The name, designation and pay of all members of the establishment holding permanent posts whether on duty or absent or on other duty, leave or deputation or in temporary posts elsewhere, shall be distinctly shown. The date of birth, or appointment to present post and of promotion to present pay of each person as well as the number and date of the orders creating the post as it stands, shall be clearly entered in appropriate columns.
- 12. Early in July in each year, the President of the Board shall prepare a detailed statement of the permanent establishment existing on 1st July, in accordance with the instruction contained in article 62 of the Civil Account Code and transmit it to the Examiner of Local Fund Accounts by the 15th August.

Establishment Pay Bills.

- 13. Pay bills of permanent and temporary establishments shall be prepared in Form A appended. If any person in superior service was absent during the month, with or without leave (except on casual leave) an absentee statement in Form B appended shall accompany the bills.
- 14. Pay bills shall be passed for payment under the signature of the President or any other officer authorized by him during his absence from headquarters. Cheques shall then be drawn and issued under the signature of the President or any other officer duly authorized by him in favour of the payee or the officer of the Board who is responsible for the disbursement of the amounts to the proper payees. The signatures of the payees with dates shall be obtained in acquittance rolls, and stamps shall be affixed to the receipts for payment of sums in excess of Rs. 20. Payment to illiterate persons shall be attested by one or more witnesses. When the payee signs in a vernacular, the amount acknowledged shall be noted by him in the same vernacular.
 - 15. Amounts drawn but not disbursed to the payees before the end of the month in which they are drawn shall be refunded by short drawals in the next bill.
 - 16. Pay bills may be signed at any time on the last working day of the month by the labour of which the pay is earned and are due for payment the next working day. An employee finally quitting the service of the Board may however be paid to the date of his so quitting service before the end of the month, a supplemental bill being presented in respect of his pay.

- 17. If the first six days of a month are public holdays, the President may, if he thinks fit, direct payment on the last working day before holidays.
- 18. Salaries of the President and Commissioners of the Board may be paid upon the personal claim of the officer concerned and to his personal receipt. At the instance of the officer concerned the pay bill may be made payable to some banker or agent recognized by the Board for this purpose.
- 19. Pay and allowances or any money due from the Board can be drawn on behalf of an officer or servant for the day of his death irrespective of hour at which the death took place.
- 20. Pav and allowances or any money due from the Board claimed on behalf of a deceased officer or servant of the Board shall not ordinarily be paid without the production of legal authority. Under the special orders of the Board and after such investigation into the rights and title of the claimants as may be deemed sufficient, claims may be paid without such legal authority, provided that where the claim exceeds Rs. 500 an indemnity bond to the satisfaction of the Board shall be obtained before payment.
- 21. Arrear pay shall be drawn not in the ordinary monthly bill, but in a separate bill, the amount claimed for each month being entered separately and reference being also given to the bill from which the charge was omitted or withheld, or on which it was refunded by deduction or to any special order of the competent authority granting a new allowance.
- 22. Pies shall be omitted from all hills for pay and allowances. All individual items in such bills shall be calculated to the nearest anna (fractions below half an anna being omitted and half an anna or over being reckoned as one anna).

Travelling Allowance Bills,

23. Travelling allowance of officers and servants, other than permanent or fixed allowances shall be charged in a separate bill in Form C appended. As a rule, immediately on the return of the officer or servant to the headquarters station, bills should be prepared and the amount passed for payment in accordance with the Travelling Allowance Rules.

Explanation.—The term 'officer' in this rule shall include the Commissioners of the Board.

Service Books.

24. A record of the services of each permanent officer or servant of the Board shall be maintained by the President in Form D appended. The costs of the service book shall be recovered from the officer or servant concerned.

THE MADRAS RELIGIOUS ENDOWMENTS ACT.

The service books should be taken up for verification in January of every year and the President shall, after satisfying himself that the services of the Board's officer or servant concerned are correctly recorded in each book, record therein a certificate in the following words over his signature: "Services verified up to date."

Contingencies.

- 26. The term 'contingencies' covers charges which are incidental to the management of an office such as postal and telegraph charges, purchase of reference books, periodicals, stationery, etc., electric and telephone charges and miscellaneous office expenses, including wages of coolies engaged on manual labour and paid at daily or monthly rates. No pay of any kind or additions to pay shall be charged to this head.
- Permanent advance for the Board's office shall be sanctioned by the Board. A register of contingent expenditure shall be maintained in the office of the Board in Form E appended.
- 28. Vouchers for more than Rs. 25 shall be retained in the office and preserved for three years, while the others shall be destroved or so defaced that they cannot be used again.
- 29. The inspecting officers including the Honorary Assistant Commissioners shall maintain a register of contingent expenditure in the appended Form E.
- 30. Whenever there occurs a transfer of charge and on the 15th July of each year, every inspecting officer holding a permament advance shall send to the President of the Board an acknowledgment of the amount due from and accountable for by himself.

Stamps.

- 31. Postage stamps shall be purchased and issued for use both in the Board's office and by inspecting officers after they are perforated by a perforator with the impression 'H. R. E. B.'
- The charges for postage stamps shall be drawn on separate contingent bills.

Budget.

33. A budget estimate shall be prepared showing the receipts which are expected to be realized and the expenditure for which proper sanction already exists together with the fresh charges, if any, which are likely to be formally sanctioned and incurred during the year to which the budget relates. Expenditure shall be classified under the following major and minor heads:

their

		Major.	Minor.
	I.	Salary of officers.	(i) Pay of President.
		The state of the s	(ii) Pay of Commissioners.
			(iii) Pay of Secretary.
		Pay of establishment.	(i) Pay of establishment in Board's Office. (ii) Pay of insepcting staff inclusive of
	2.	Pay of establishment.	clerks and peons.
			(i) Travelling allowance.
	3.	Allowances.	(ii) Other allowances.
	3.	1 And Walled	(ii) Other and in
			(i) Rents, rates and taxes.
			(ii) Postage and telegrams.
4		THE RESERVE SALES	(iii) Stationery.
9		The state of the same of the s	(iv) Books and perisdicals.
			(v) Electric and lighting charges.
	4.	Contigencies.	(vi) Telephone charges.
			(vii) Printing charges.
			(viii) Furniture.
			(ix) Pay of menials.
			(x) Miscellaneous.
			(i) Vakil's fees.
	5.	Law charges.	(ii) Stamp charges. (iii) Out fees.
	6	Charges for the audit of	the accounts of maths and excepted temples.
	0.	Charges for the addit of	(i) Repayment of loans.
	7	Loans and Advances.	(ii) Interest on loans.
	1.	Louis and Advances.	(iii) Grant of loans.
		4	(in Grant or round)

Reappropriation or transfer of funds from the allotment under one minor head of expenditure to another under the same major head may be made by the President. No reappropriation from one major head to another shall be made without the sanction of the Board.

Accounts and Registers.

- 34. The following registers shall be maintained in the Board's office in printed forms.
 - 1. A cash book.
- 2. A demand register to watch the realizations of contributions due from maths and temples.
- 3. A miscellaneous receipt register with receipt books and counterfoils.
 - 4. A deposit register.
- 5. A register of advances to record transactions chronologically.
 - 6. A posting register to compile monthly accounts.
 - 7. Postage stamp account.
 - 8. A contingent register for the Board's office.
 - 9. An establishment audit register.
- 35. Stock books showing receipts, issue and balances shall be maintained in the office of the Board for

(a) Stationery and printed forms,

(b) furniture, and

(c) cycles, type-writers, tools and plant and other stores.

The stock shall be verified by such officer as may be autho. rized by the President once in a year in the month of May. The inspecting officers shall maintain similar stock registers which shall be verified once a year by the Commissioner of the division concerned.

Miscellaneous.

36. No officer of the Board shall issue duplicates or copies of receipts granted for money received or duplicates for copies of bills or other documents for the payment of money which has already been paid on the allegation that the originals have been lost. If any necessity arises for such a document, a certificate may be given that on a specified day, a certain amount on a certain account was received from or paid to a certain person.

Closing of monthly accounts and verification of balances.

37. At the end of each month, the receipts and expenditure entered in the cash book shall be compared item by item with the vouchers and with the entries in the Bank pass book and the balance specified in figures as well as in words. The difference, if any, between the Bank balance as shown in the cash book and the pass book balance shall be explained in a memorandum of reconciliation to be recorded therein over the signature of the President.

FORM A.

THE BOARD OF COMMISSIONERS FOR HINDU RELIGIOUS ENDOWMENTS, MADRAS.

(See Rule 13 of the Account Rules of Hindu Religious Endowments Board.)

Detailed Pay Bill of the Board's office or mufassal establishment for the month of 192

[N. B.-1. The periodical increment certificate form should be scored through when no increment is drawn.

- 2. Each bill must be accompanied by the form which includes the absentee statement and statements of substantive changes except where such forms are blank and do not otherwise require to be submitted.
- 3. In the remarks column (11) should be recorded all unusual permanent events such as deaths, retirements, permanent transfers, and first appointements which find no place in the increment certificate or absentee statement but which should be recorded in the statement of substantive charges.
- 4. The total pay of a subordinate officiating in a certain scale should be drawn for the period only that he officiates in that section.
- 5. A red line should be drawn right across the sheet after each section of the establishments and under it the total of columns (3), (4), (5) and (6) for the section should be shown:]

Details of pay of absentees refunded.

_	-					-				-
Desi	gnatio	n of post	. Naı	me of in	cumben	t.	Period.		Amoun	t.
			1						Rs.	Α.
			1							
(1) Name of establishment and post.	(2) Name of incumbent.	. (3) Pay.	(4) Leave salary.	(5) Additional pay for officiating.	(6) Allowances,	(7) Fines.	(8) Provident Fund.	(9) Other funds (specify funds).	(10) Incomex.	(11) Remarks, Acquit-
		Rs. A.	Rs. A.	Rs. A.	Rs. A.	Rs. A.	Rs. A.	Rs. A.	Rs. A.	Rs. A
D D	Total of pays, leave-salary, additional pay for officiating and allowances [columns (3) to (6)]— Rs. A. Deduct undisbursed pay refunded as detailed on first page Deduct total of fines, provident fund, other funds and income-tax [columns (7) to 10] Total deductions Net sum required for payment rupees (in words) Pay Rupees (in words)—									
Examined and entered. Dated Accountant. 192 . (Signature) President. Hindu Religious Endowments Board. 1. Received contents: also certified that I have satisfied myself that all 1 month										
1.2			() + me >	3 1	nonths		to this do			
							rs secored			

from this bill) have been disbursed to the proper persons; that their receipts have been taken in acquittance rolls filed in my office, with receipt stamp duly cancelled for every payment in excess of Rs. 20.

STATION Date

(Signature)

192 .

(Designation of head of office.)

Periodical increment certificate.

[N. B.—Do not include names of subordinates whose names are not recorded on pay bills.]

Name of incumbent and whether holding post in substantive (S) or officiating (O) capacity.	Scale of pay of post held (rupees per month.)	Date of last in- crement (or of appoint- ment to the post.)	Date of present increment.	Pay after present incre- crement (rupees per month.	Period of suspension for misconduct or leave without pay sirce date shown in column
(2)	(2)	(3)	(4)	(5)	(6)
		1 - 17	2.49		

FORM B.

THE BOARD OF COMMISSIONERS FOR HINDU RELIGIOUS ENDOW-MENTS, MADRAS.

Absentee Statement of the Board's office or mufassal establishment for the month of 192

	trive (th).	of vacant month).	Nature of Absence.				Officiating suber- dinate (if any)			va
Name of absentee.	Actual rate of substantive pay (Rupees per month).	Designation and rate of vacant pay (in Rupees per month).	Kind.	Period.	From a.m. or p.m.	Rate of absent allow- ance (Rupees per month.)	Nam _e .	Substantive post.	Substantive pay (Rupces per month).	Additiona pay for officiating (Rupees per month).
				CUNX), (;) (<u>), (;)</u>

Statement of substantive changes.

[N. B.—Do not include changes due to increments or those pertaining to men whose names are not recorded on pay bills.]

Name of subordinate	Designation.	Time scale of pay (Rupees per month.)	Old rate of pay (Rupees per month).	Altered rate of pay (Ru- pees per month).	Date of alteration.	Reason- of altera- tion.
					1	

FORM C.

THE BOARD OF COMMISSIONERS FOR HINDU RELIGIOUS ENDOWMENTS, MADRAS.

Voucher No. of 192 .
(See Rule 23 of the Account Rules of Hindu Religious Endowments Board)
Total (in words) of bill—

1r. Contents received: also certified that I have satisfied myself that the

amounts included in bills drawn 2 months previous to this date with the exception

3 months

of those detailed below (of which the total amount has been refunded by deduction from this bill) have been disbursed to the officers or subordinates therein named and their receipts taken in the acquittance roll; also that the allowances drawn for ministerial or menial officers for journeys by road or boat do not exceed their actual he

travelling expenses, and that under my orders and to my knowledge-travelled

by 3______; also that it was necessary for the officers for whom halting allowance at headquarters is drawn to keep up the whole or part of their camp equipage during such halt, and that the expense incurred on this account was not less than the halting allowance drawn.

That I have taken pains to ascertain the length of the above mentioned marches and have shown them accurately to the best of my knowledge and belief.
 That no travelling allowance has been drawn in any case for days of casual

 That no travelling allowance has been drawn in any case for days of casual leave, or for Sundays or authorized holidays not actually spent in camp. Passed for Rupees.

Dated______192 .

(Controlling officer.)

(Head of office.)

(3) Here state conveyance used.

⁽¹⁾ Clause (2) should be scored out with a pen when no mileage is claimed under Rule 25, Madras Travelling Allowance Rules.
(2) One line to be used and others scored out.

Pay Rupces (in words and figures)————————————————————————————————————										
Travellis month of——	ng al	lowance	bill of	the es				gildownie		the
Name and designation.	tion. (1) From (2) From (3) Ont			From	oute.	G Purpose of journey.	Kind of journey, i.e., by road, boat steamer or rail (mail or ordinary) or public Conveyance. (6)		e.,	Number of miles.
						Ī.				
	Allowances claimed.									T
Name and designa-	bos actu	age by ad or at or al ex-	Dai allowa		Raily and steam fare	ner	or can	by road al in a nveyance.		
tion.	Rate.	® Amount.	Number of days.	© Amount.	Class single or doubt.	Ö Amount.	Single actual rate of the lower class in the public conveyance.	One-third daily allowance sub- ject to a mini- mum of As. 4.	Total of each line.	(S. Remarks.
Total		Rs. A. P.		Rs, A. P.	1		Rs. A	Rs. A. P.	Rs.	A.P.
										-

Dated 192 .

FORM D.

THE BOARD OF COMMISSIONERS FOR HINDU RELIGIOUS ENDOWMENTS, MADRAS.

(See Rule 24 of the Account Rules of the Hindu Religious Endowments Board.) Service Book.

Space should be provided on the reverse of the title page of the service book to record thumb and finger impressions of the subordinates of the Board under the following heading:—
"Thumb and finger impressions of the subordinates of the Board."

The opening page of the service book should contain the following entries:-

(1) Name. (2) Race.

(3) Residence.(4) Father's name and residence.

(5) Date of Birth by the Christian era as nearly as can be ascertained.(6) Exact height by measurement.

7) Personal marks of identification.

8) Signature of subordinate. (9) Signature and designation of the head of the office or other attesting officer.

The remaining folios of the service book should be divided into fifteen columns. viz.,-

(1) Name of appointment.

(2) Whether substantive or officiating, and whether permanent or temporary.
(3) If officiating, here state substantive appointment.
(4) Pay in substantive appointment.
(5) Additional pay for officiating.
(6) Other emoluments falling under the term 'Pay.'

7) Date of appointment.

(8) Signature of officer or subordinate. (9) Signature and designation of the head of the office or other attesting officer in attestation of columns (1) to (8).

(10) Date of termination of appointment.
(11) Reason of termination (such as promotion, transfer, dismissal, etc.)
(12) Signature of the head of office or other attesting officer.
(13) Leave taken—Nature and duration of.
(14) Signature of the head of office or other attesting officer.

(15) Reference to any recorded punishment or censure, or reward of praise the subordinate.

FORM E.

Register of Contingent Charges of the office of the Board of Commissioners for

Hindu Religious Endowments, Madras.

	Remarks.		Rs.	82	B.A.F.			
	LetoT		Rs.	1.71	R.A. F			
10	Miscellancous.		Rs.	16				
	Law contingencies.		Rs.	15	RAND RAND RAND RAND RAND RAND RAND			
	Refunds.		Rs.	14	R.A.P			
	Pay of menials.		Rs.	13	R.A.P			
	Telephone charges.		Rs.	12	R.A.P			
Š.	Electric and lighting charges.		Rs.	""	R.A.P			
charge	ent, rates and taxes.	nt.	Rs.	OI	A.A.P			
Sub-heads of charges.	Purchase and repairs of furniture.	Budget grant.	Rs.	6	RA.P.			
Sı	Printing and publication charges.		Rs.	8	R.A.F.			
	Books and Periodi- cals.		Rs.	7	K.A.F.			
	Postage and Telegrams.		Rs.	9	R.A.F.			
	Stationery.	ĸ	R.A.F.					
4 Description of charges.								
_	whom paid.	οT		60				
_	her number.	Nono	No. 10	CI				
-	- Date.							

(x) Rules in regard to the publication of the accounts of the Board and Temple committees and the manner of audit of the accounts of Maths and Temples.

(G. O. No. 4701, L. & M., dated 1st December, 1927.)

1. (i) An abstract of the accounts kept under sub-section (1) of section 45 by the Board, and by trustees of religious endowments shall be published as provided hereunder:—

Description of the authority to which the accounts relate.	By whom to be pub- lished.	Time of pub- lication.	Where to be published.
(1)	(2)	(3)	(4)
(a) The Board	The Local Government.	As soon as possible after the receipt by the Local Government of the auditor's report.	Fort St. George Gazette.
(b) Maths or excepted temples.		Within sixty days after the receipt of the auditor's report by the Board.	†
(c) Non-excepted temples	The committee concerned.	Within sixty days after the receipt of the auditor's report by the committee con- cerned.	‡

(ii) If the Board or a committee makes default in publishing any abstract of accounts as required in sub-rule (i), the Local Government, in case the default is by the Board, and the Board, in case the default is by a committee, may, by order in writing, fix a period for such publication by the Board or committee as the case may be. If such publication is not made within the period so fixed, the Local Government or the Board, as the case may be, may cause such publication to be made and recover the cost thereof from the Board or the committee concerned.

^{*} Gazette or gazettes of the district or districts in which the local area or the institutions for which the committee is constituted is or are situated.

^{† (}i) By affixture in the notice board of the math or temple concerned; and (ii) in a vernacular daily or periodical newspaper circulated in the locality selected by the Board.

^{†(}i) By affixture in the noice board of the temple concerned, and
(ii) in a vernacular daily or periodical newspaper circulated in the locality
selected by the Board.

- 2. (i) In auditing the accounts of a math or temple under sub-section (2) of section 45, the auditor shall examine and his report shall state—
 - (1) whether there have been any deviations-
- (a) from the mamul dittam, if any, fixed in respect of its services and
 - (b) from its budget;
- (2) whether the various items of its income have been realized at the proper times and whether legal steps to recover amounts overdue have been taken:
- (3) whether proper investments of its surpluses and balances have been made;
- (4) whether every item of its expenditure has been sanctioned by the authority competent in that behalf and is supported by a proper voucher;
- (5) whether there has been any diversion of its funds for purposes other than those for which the endowment was established;
- (6) whether a correct inventory of its valuables has been maintained;
- (7) whether a correct list of its liabilities has been maintained; and
- (8) whether its assets, including its cash balances, have been verified by him.
- (ii) After the completion of the audit, the auditor shall prepare an abstract of the audited accounts for publication and submit the abstract along with his report.
- (iii) In these rules, unless there is anything repugnant in the subject or context, "Government" means the "Government of Madras".
 - (iv) Budget—Form of Budget fixed by the Board under secs. 56 and 61 of the Act to be submitted by Maths and Temples.

(See Memo. No. 6010, dated 27th October, 1925.)

- (v) Rules for the Calculation of Income of Temples and muths.
 - (G. O. No. 23, dated 4th January, 1927.)
- 1. The income of a temple or math shall include:-
 - (a) receipts from immovable properties;

Explanation.—Receipts from immovable properties, when such receipts are in kind, shall be valued, in the case of produce

consumed by the temple or math, at its market value on the date of its receipt and in the case of produce sold at the amount realized by its sale.

- (b) receipts from investments;
- (c) receipts in cash not intended by the donors to be contributions to capital;
- (d) receipts in kind not intended by the donors to be retained for the benefit of the temple or math or specific endowment without being converted into money but not including an ubahayam or voluntary contribution to meet the expenses of a specified service therein.

Explanation.—Such receipts shall be deemed to accrue as income on the date of the sale thereof and shall be valued at the amount realized by such sale.

Explanation to the rule.—Income in this rule means gross income after deducting only

- (a) the costs of production (which shall not include the capital cost of irrigation works or the cost of maintenance of or repairs to such works in excess of a limit fixed by the Board with reference to past expenditure on such maintenance or repairs);
 - (b) the revenue payable to Government; and
- (c) the actual cost of collection not exceeding ten per cent. of the amount collected except in cases where the Board permits the expenditure of more.
- 2. The assessment of contribution payable by a temple or math or specific endowment shall be made for each fashi year on the basis of the income realized during the previous fashi year.
- 3. The trustee of every temple or math shall prepare and furnish on or before the 31st of August in each fasli year to the Board, a return in the form appended here to or in such other form as may be directed by the Board showing the income of the endowment during the previous fasli year calculated in accordance with these rules.
- 4. If the trustee of any temple or math or specific endowment fails to make a return within such time or makes a return which, in the opinion of the Board, is not correct or complete, the Board may assess the income to the best of its judgment and the amount so assessed shall be deemed to be the income of the temple or math or specific endowment for the purposes of section 65 of the Madras Hindu Religious Endowments Act, 1923.
- 5. It shall be competent to the Board to make an agreement with the trustee of a temple or math or specific endowment as to the amount of yearly contribution payable by him for a period not exceeding five years at a time.

Transitory provisions.

- The assessment of contribution payable by a temple or math for every year or part thereof during the period commencing from the 15th of April, 1925, and ending with the 30th of June, 1926, shall be made on the basis of the income realized by the temple or math or specific endowment during the twelve months ending with 30th June, 1926.
- The trustee of every temple or math shall prepare and furnish to the Board and in the case of a temple also to the committee, if any, having jurisdiction over the temple within month of the final publication of these rules a return in the form appended hereto or in such other form as may be directed by the Board showing the total gross income of the temple or math or specific endowment for the fasli year ending with 30th June, 1926, calculated in accordance with these rules.
- 8. If the trustee of any temple or math or specific endowment fails to make a return within such time or makes a return which in the opinion of the Board is not correct or complete, the Board may assess the income to the best of its judgment and the amount so assessed shall be deemed to be the income of the temple or math for all the purposes of the Madras Hindu Religious Endowments Act, 1923.
- 9. In these rules and the Appendix thereto unless there is anything repugnant in the subject or context, "Government" means the "Government of Madras".

APPENDIX. Statement showing the annual income for the year--temple-math situated in--district. ----village-town-----taluk-Rs. 1. Receipts from immovable properties of the math or temple. (a) Income from landed property including inams registered in the name of the religious endowment or of the deity (b) Income from rents derived from house property belonging to the religious endowment or the deity 2. Income from investments 3. Receipts from kattalais or endowments for services 4. Receipts in cash not intended by the donors to be contributions to capital (a) Tasdik, mohini or other similar grants from Government ... (b) From other sources 5. Receipts in kind not intended by the donors to be retained for the benefit of the temple or math without being converted into money.

Notes-I. The income shall, in all cases, be deemed to be the gross income of the endowment in question after deducting only

Total income.

(a) the cost of production; (b) the revenue payable to Government; and

(c) the actual cost of collection not exceeding 10 per cent, of the amount collected except in cases where the Board permits the expenditure of more.

II. Receipts from immovable properties when such receipts are in kind shall be valued in the case of produce consumed by the math or temple at its market value on the date of its receipt or in the case of produce sold at the amount realized by its sale.

III. Receipts from immovable properties to be shown in item 3 shall be valued in the manner laid down in Note II above.

IV. Receipts in kind to be shown in item 5 shall not include an ubhayam or voluntary contribution to meet the expenses of a specified service in the temple or math. Such receipts shall be deemed to accrue as income on the date of the sale thereof and shall be valued at the amount realised by such sale.

RULES UNDER SECTION 44-B (RESUMPTION AND RE-GRANT OF INAMS GRANTED FOR THE PERFORMANCE OF ANY CHARITY OR SERVICE CONNECTED WITH ANY MATH OR TEMPLE IN CASE OF ALIENATION OF THE INAM OR FAILURE TO PERFORM THE CHARITY OR SERVICE).

G. O. No. 2742 (Revenue), dated 15-11-1935, Fort St. George Gazette, Pt. I, dated, 19th November, 1935.

(vii) DEVADASI AND DEVADASI INAMS.

(G. O. No. 373, L. & M., dated the 25-2-1930, Pt. I-A of the Fort St. George Gazette, dated the 4th March, 1930, p. 365.)

In exercise of the powers conferred by section 44-A and clause (a) of sub-section 71 of the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927) as amended by the Madras Hindu Religious Endowments (Amendment) Act, 1929 (Madras Act V of 1929), the Governor-in-Council is hereby pleased to make the following rules:

Rules.

- 1. In these rules 'Act' means the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927), as amended by the Madras Hindu Religious Endowments (Amendment) Act, 1929 (Madras Act V of 1929).
- 2. The quit-rent to be imposed under sub-section (1) of section 44-A of the Act shall be the current assessment on the land—less any quit rent, jodi or excess charge already payable thereon. The quit rent so imposed shall not be liable to revision.

Explanation.—In the case of proprietory villages the current assessment on similar lands in the neighbouring ryotwari villages shall be taken to be the current assessment on the inam land for enfranchisement.

- 3. As soon as may be after the publication of these rules, the Collector of the district shall by a notification in the District Gazette, direct that the trustee of every temple in the district as well as the devadasi concerned shall send to him within such time as may be specified in the notification a statement in the form annexed to these rules, of the devadasi inams held in connection with the temple which should be enfranchised under the Act.
- 4. The Collector shall also make such inquiry as he may think fit to ascertain what inams in the district should be enfranchised under the Act and collect such information relating to the said inams as he may think necessary.
- 5. (a) If the Collector is satisfied that the statement sent by the trustee of any temple or the devadasi is correct and complete, he may (take steps for the enfranchisement of) the inam on the basis of the particulars contained in such statement.
- (b) If the Collector considers that the statement sent by the trustee or devadasi is inaccurate or incomplete, or if no statement is received within the time specified in the notification issued under rule 3, the Collector may (take steps for the enfranchisement of) the inam on the basis of the information collected by him under rule 4:

Provided that in each case falling under this sub-rule, the Collector shall give notice in writing of the (proposal for enfranchisement to the trustee and devadasi concerned and shall consider any representations which they may make within the period specified in such notice.

6. In the case of grants dealt with by the Inam Commissioner, the Collector shall submit proposals for their enfranchisement to the Inam Commissioner in such form as he may direct. The Inam Commissioner shall then pass orders for their enfranchisement under clause (a) of sub-section (1) of section 44-A of the Act. Any title deed that the Inam Commissioner may have previously issued in respect of any such grant shall thereupon be deemed to be cancelled and a fresh title deed shall be issued by him. The enfranchisement shall in each case take effect from the date of the issue of such fresh title deed by the Inam Commissioner.

In the case of grants not dealt with by the Inam Commissioner, the Collector shall proceed to enfranchise them himself. He shall issue an order in each case freeing the grant from the condition of service and fixing the date from which the order shall take effect.

7. The quit rent imposed under sub-section (1) of section 44-A of the Act shall be paid to the temple from the revenue collections of the village as beriz deduction.

(Forms-omitted.)

(viii) RULES FOR INQUIRIES BY THE BOARD.

- 1. Inquiries by the Board under the Act shall be made either by all the Commissioners sitting together or when so authorized by the Board in a specific case or generally by by-laws framed under clauses (a) and (d) of sub-section (1) of section 15 by any one or more of them.
- 2. At any stage during the course of an enquiry the Board may, of its own motion or at the request of any party to an inquiry, issue summons to any person to give evidence as a witness or to produce any document in his possession and may examine him as a witness or require him to produce such document.
- 3. Every summons for the attendance of a person to give evidence or to produce a document shall specify the time and place at which and the day on which he is required to attend and also whether his attendance is required for the purpose of giving evidence or to produce a document or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described with reasonable accuracy.
- 4. Any person present at the place of inquiry may be required by the Board to give evidence or to produce any document then and there in his possession or power.
- 5. Whoever is summoned to appear and give evidence in an inquiry shall attend at the time and place mentioned in the summons for that purpose and whoever is summoned to produce a document shall either attend to produce it or cause it to be produced at such time and place or cause such document to be sent to the Board by registered post so as to reach it at such time and place.
- 6. The summons shall be deemed to have been duly served on the person summoned if it is sent by registered nost and an acknowledgment or refusal thereof has been received.
- 7. Service shall in all cases he made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which the evidence is required.
- 8. A person summoned and attending shall, unless the Board otherwise directs, attend at each hearing until the inquiry is completed.
- 9. A person summoned either to give evidence or to produce a document shall, along with the summons, be given such batta and travelling allowances as may be fixed by the Board.
- 10. It shall be competent to the Board to allow in addition any reasonable remuneration to any expert who may be summoned to give evidence for the time occupied both in giving evidence

and in performing any work of any expert character necessary for or connected with the inquiry.

- 11. No summons shall be issued at the instance of a party unless the party first pays to the Board such sum, as in its opinion is sufficient to defray the travelling and other expenses of the person summoned in passing to and from the place of inquiry and for one day's attendance and the remuneration payable, if any.
- 12. Where it is necessary to detain the person summoned for a longer period than one day the party at whose instance he was summoned shall pay to the Board such sum as it may fix to defray the expenses of such detention for such further period and in default of such deposit the Board shall discharge the person summoned without requiring him to give evidence.
- 13. The petitioner has the right to begin unless the respondent admits the facts alleged by the petitioner and contends that either in point of law or on some additional facts alleged by the respondent the petitioner is not entitled to any part of the relief which he seeks, in which case the respondent has the right to begin.
- 14. (1) On the day fixed for the hearing of the inquiry or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.
- (2) The other party shall then state his case and produce his evidence if any and may then address the Board generally on the whole case.
- (3) The party beginning may then reply generally on the whole case.
- 15. Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party; and in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence and the other party may then reply specially on the evidence so produced by the party beginning; but the party beginning shall then be entitled to reply generally on the whole case.
- 16. The evidence of the witnesses in attendance shall be taken orally in open office in the presence and under the personal direction of a Commissioner of the Board.
- 17. It shall not be necessary to take down the evidence of the witnesses in writing at length but as the examination of each witness proceeds, a memorandum of the substance of what each witness deposes, shall be written and signed by the presiding

Commissioner or by the Commissioner as the case may be and shall form part of the record.

- 18. (1) Where the Commissioner of the Board is unable to make a memorandum as required in the above rule, he shall cause the reason of such disability to be recorded and shall cause the memorandum to be made in writing from his dictation in open office.
- (2) Every memorandum so made shall form part of the record.
- 19. (1) Where a witness is about to leave the jurisdiction of the Board or other sufficient cause is shown to the satisfaction of the Board why his evidence should be taken immediately, the Board may, on the application of any party or of the witness, at any time after the institution of the inquiry, take the evidence of such witness in the manner hereinbefore provided.
- (2) Where such evidence is not taken forthwith and in the presence of the parties, if any, such notice as the Board thinks sufficient of the day fixed for the examination shall be given to the parties, if any.
- 20. The Board may at any stage of an inquiry recall any witness who has been examined and may put such questions to him as they think fit.
- 21. The Board may at any stage of an inquiry inspect any property or thing concerning which any question may arise.
- 22. The Board may order that any fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as it considers reasonable: provided that where it appears to the Board that any party bona fide desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by the affidavit.
- 23. (1) Upon an application evidence may be given by affidavit, but the Board may, at the instance of either party, order the attendance for cross-examination of the deponent.
- (2) Such attendance shall be at the place of inquiry, unless the deponent is exempted from personal appearance therein or the Board otherwise directs.
- 24. (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted provided that the grounds thereof are stated.
- (2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies

of or extracts from documents, shall (unless the Board otherwise directs) be paid for by the party filing the same.

25. Any person who is required to appear under rules 12, 18 or 30 or to produce a document shall, on failure to do so, unless he proves to the satisfaction of the Board that such failure was not wilful but arose from circumstances beyond his control, be liable to a penalty not exceeding Rs. 100 for every such failure. The Court shall on the application of the President of the Board recover the fine imposed as if a decree had been passed for the fine by the Court against the person concerned.

(ix) Rules for Issue of Commissions to examine witnesses.

(G. O. No. 586, L. & M., dated 14-2-1927.)

- 1. The Board may in any inquiry issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who has to travel more than 200 miles by rail or 50 miles by road or canal or who is exempted from personal appearance in a civil Court or who is from sickness or infirmity unable to attend it.
- 2. An order for the issue of a commission for the examination of a witness may be made by the Board either of its own motion or on the application, supported by affidavit or otherwise, of any party to the inquiry or of the witness to be examined.

3. A commission for the examination of a person who resides within the local limits of the jurisdiction of the Board may be issued to any person whom the Board thinks fit to execute it.

4. (1) The Board may in any inquiry issue a commission for

the examination of-

(a) any person who is about to leave the local limits of its jurisdiction before the date on which he is required to be examined, and

(b) any Civil or Military officer of the Government who cannot, in the opinion of the Board attend without detriment to

the public service.

(2) Such commission may be issued to any person whom the

Board thinks fit to execute it.

- 5. Where the Board of its own motion or on application made is satisfied that the examination of a person residing at any place not within its jurisdiction is necessary, it may issue a commission or a letter of request to a competent Court of law to obtain from the person concerned replies to such interrogatories as may be sent to such Court.
- 6. Every person receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto Mangamwadi Math Collection. Digitized by eGangotri

- 7. Where a commission or letter of request has been duly executed, it shall be returned, together with the evidence taken under it to the President of the Board and the commission or letter of request and the return thereto and the evidence taken under it, shall (subject to the provisions of the next following rule) form part of the record of the inquiry.
- 8. Evidence taken under a commission shall not be read as evidence in the inquiry without the consent of the party against whom the same is offered, unless,
- (a) the person who gave the evidence is dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance at the place of inquiry, or is a person in the service or the Crown who cannot, in the opinion of the Board, attend without detriment to the public service, or
- (b) the Board in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorizes the evidence of any person being read as evidence in the inquiry, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Commissions for Local Investigations.

- 9. In an inquiry in which the Board deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual nett profits, the Board may issue a commission to any person whom the Board thinks fit to execute it directing him to make such investigation and to report thereon to the Board.
- 10. (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Board.
- (2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the inquiry and shall form part of the record; but the Board, or with the permission of the Board any of the parties to the inquiry, may examine the Commissioner personally before the Board touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation.
- (3) Where the Board is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

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Commissions to examine accounts.

- 11. In an inquiry in which an examination or adjustment of accounts is necessary the Board may issue a commission to any person whom the Board thinks fit to execute it directing him to make such examination or adjustment.
- 12. (1) The Board shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.
- (2) The proceedings and report (if any) of the Commissioner shall be evidence in the inquiry, but where the Board has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

General Provisions.

- 13. Before issuing any commission under these rules at the instance or for the benefit of a party, the Board may order that such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid to the Board by the party at whose instance or for whose benefit the commission is issued. If the sum so specified is not paid, the Board may decline to issue the commission.
- 14. Any Commissioner appointed under these rules may, unless otherwise directed by the order of appointment,—
- (a) examine the parties themselves if any and any witness whom they or any of them may produce and any other person whom the Commissoner thinks proper to call upon to give evidence in the matter referred to him:
- (b) call for and examine documents and other things relevant to the subject of inquiry;
- (c) at any reasonable time enter upon or into any land or building mentioned in the order.
- 15. (1) Where a commission is issued under these rules, the Board shall direct that the parties to the inquiry, if any, shall appear before the Commissioner in person or by their agents or pleaders.
- (2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.
- 16. The provisions of the rules framed under the Madras Hindu Religious Endowments Act. 1923, relating to the summoning, attendance and examination of witnesses and to the remuneration of witnesses, shall apply to persons required to give evi-

dence or to produce documents under these rules before a Commissioner appointed under these rules.

- 17. If the person to whom a commission is issued under these rules is not already in the service of the Board or of a committee, the Board may sanction the payment to him of such remuneration or allowances as it may think reasonable.
 - (x) RULES FOR DESTRUCTION OF RECORDS OF THE BOARD.
- (G. O. No. 873, P. & H., dated 5th March, 1938, Fort St. George Gazette, dated 22nd March, 1938).
 - (xi) Rules regulating the personal conduct of officers and servants of the board.
 - (G. O. No. 10, P. & H., dated 3-1-1938, Pt. I-A of the Fort St. George Gazette, dated 25th January, 1938 at pp. 45-46.)

In exercise of the powers conferred by sub-section (1) and clause (h) of sub-section (2) of section 71 of the Madras Hindu Religious Endowments Act, 1926 (Madras Act II of 1927), the Government of Madras are hereby pleased to make the following rules for regulating the personal conduct of officers and servants of the Madras Hindu Religious Endowments Board:—

- 1. RESPONSIBILITY OF OFFICERS AND SERVANTS FOR ACTS OF THEIR FAMILY.—An officer or servant of the Board is responsible for any act done by his wife or by any other member of his family living with or in any way dependent on him which, if done by himself, would constitute a breach of these rules.
- 2. Gift, Gratuities and Rewards.—Save as otherwise provided in these rules, an officer or servant of the Board shall not, except with the previous sanction of the President of the Board (hereinafter referred to as the President), accept directly or indirectly on his own behalf, or on behalf of any other person, or permit any member of his family so to accept, any gift, gratuity or reward of any offer of a gift, gratuity or reward from any person.
- 3. Subscriptions.—Officers and servants of the Board shall not take any part in the collection of subscriptions for any public or local purposes.
- 4. Purchase of Resignation.—Officers and servants of the Board shall not enter into any pecuniary arrangement for the resignation by one of them of any office under the Board for the benefit of others. Should this rule be infringed, any appointment consequent upon such resignation will be cancelled and dis-

ciplinary action will be taken against such of the parties to the arrangement as are still in service under the Board.

- 5. CONTROL OVER IMMOVABLE PROPERTY HELD OR ACQUIRED BY OFFICERS AND SERVANTS OF THE BOARD.—Every officer or servant of the Board or candidate for service under the Board shall make to the President a declaration of all immovable property which may from time to time be held or acquired by him or by his wife or by any member of his family living with or in any way dependent on him. Such declaration shall state the district within which the property is situated and shall give such further information as the Board may require.
- Note.—(i) The declaration must include all immovable property held or acquired wherever situated in India. It should as far as possible give all the details specified in the form in Appendix A.
- (ii) Every officer or servant of the Board shall submit to the President not later than the 15th January in each year a statement in the form given in Appendix A showing all the immovable property of which he stood possessed, or in which he had an interest, at the close of the preceding calendar year. In columns 6 and 21 of the form, particulars shall be entered of any immovable property relinquished or otherwise disposed of.
- (iii)) If in any year an officer or servant of the Board has neither acquired nor relinquished or otherwise disposed of any immovable property or any interest in immovable property he may instead of a return in the form given in Appendix A submit a certificate in the form below:
- I, A.B., do solemnly declare that since the submission by me of the return certificate on—I have not acquired or become possessed of either in my name or in that of any other person or relinquished or otherwise disposed of any immovable property or any beneficial or other interest in immovable property.

Place. (Signature) A.B.,

Date.

Official designation.

- (iv) The annual return shall include all immovable property acquired or registered in the name of the officer or servant of the Board either on his own account or as a trustee, executor or administrator or temple mirasdar or acquired or registered in the name of or held or managed by his wife or by any other member of his family living with or in any way dependent on him. In the case of an officer or servant of the Board who follows the Marumakkattayam or Aliyasanthana Law, the statement shall include acquisitions of immovable property by his consort.
- (v) The President shall maintain a register in the form given in Appendix B showing the landed property held by each

officer or servant and shall revise it each year with reference to the particulars furnished under note (ii).

- (vi) A candidate for appointment in superior service under the Board shall submit with his application a statement in the form in Appendix A.
- (vii) Any attempt to mislead and any failure to give full and correct information will render the officer or servant concerned liable to dismissal from service.
- 6. Promotion and Management of Companies.—An officer or servant of the Board, whether on leave or in active service, shall not take part in the promotion, registration or management of any bank or company.

This rules does not apply to the management by an officer or servant of the Board of any association established and conducted in good faith for the purpose of mutual supply and not for profit, when such management does not interfere with his duties or subject to the same condition, to any officer or servant, who, under the general or special sanction of the Board, takes part in the management of a co-operative society registered or deemed to be registered under the Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932).

- Note.—(i) Officers and servants of the Board of every class may hold office in any co-operative society composed wholly of the Board's officers and servants or partly of such officers and servants and partly of servants of the Crown or serve on any committee appointed for the management of its affairs.
- (ii) Subject to the sanction of the President and a certificate to the effect that the work undertaken will be performed without detriment to his official duties an officer or servant of the Board who is a member of a co-operative society composed wholly of the Board's officers and servants or partly of such officers and servants and partly of servants of the Crown may accept remuneration for keeping the accounts of the society.
- 7. PRIVATE TRADE OR EMPLOYMENT.—An officer or servant of the Board shall not engage in any trade or undertake any employment other than his public duties.
- 8. PECUNIARY TRANSACTIONS WITH TRUSTEES.—All officers and servants of the Board are prohibited from having any pecuniary transactions with trustees of institutions coming under the jurisdiction of the Board or with any other person in any way connected with such institutions.
- 9. Insolvency and habitual indeptedness.—(1) When an officer or servant of the Board is adjudged or declared an insolvent or when any portion of the salary of such officer or servant is constantly being attached, has been continuously under attach-

ment for a period exceeding two years or is attached for a sum which in ordinary circumstances, cannot be repaid within a period of two years, he will be hable to dismissal from the service of the Board unless he proves that the insolvency or indebtedness is the result of circumstances which, with the exercise of ordinary diligence, he could not have foreseen or over which he had no control, and has not proceeded from extravagant or dissipated habits.

- Note.—(i) An officer or servant of the Board who intends to apply to be adjudged an insolvent under any law relating to insolvency for the time being in force shall intimate his intention of doing so to the authority which has the power to suspend such officer or servant and such authority may, if it thinks fit, suspend him from service.
- (ii) An officer or servant of the Board who has been removed from service on account of insolvency is ineligible for reemployment in any branch of the Board's service.
- 10. Communication of official documents or information.—No officer or servant of the Board shall, except when empowered in this behalf by the President, communicate directly or indirectly any official document or information to any other officer or servant of the Board or an officer or servant of any local authority or a servant of the Crown, unauthorised to receive the same, or to a non-official person or to the press.
- 11. Connexion with press.—An officer or servant of the Board shall not become a proprietor in whole or in part or conduct or participate in the editing or management of any newspaper or other periodical publication.
- 12. RESTRICTIONS ON THE PUBLICATION OF DOCUMENTS AND ON COMMUNICATIONS TO THE PRESS.—(1) No officer or servant of the Board shall, in any document published under his own name or in any communication made to the press under his own name or in any public utterance delivered by him, make any statement of fact or opinion which is capable of embarrassing—
- (a) the relations between the Central Government or any Provincial Government and the people of India or any section thereof; or
- (b) the relations between His Majesty or the Governor-General and any foreign State or Prince or any Ruler of any State in India.
- (2) An officer or servant of the Board who intends to publish any document under his own name or to make any communication to the press under his own name or to deliver any public utterance containing statements in respect of which any doubt as to the application of the restrictions imposed by sub-rule (1)

may arise, shall submit to the Provincial Government a copy or draft of the document which he intends to publish or of the communication which he intends to publish or of the utterance which he intends to deliver, and shall not publish the document, make the communication or deliver the utterance, save with the sanction of the Provincial Government and with such alterations, if any, as the Provincial Government may direct.

13. EVIDENCE BEFORE COMMITTEES.—An officer or servant of the Board shall not give evidence before a public committee, unless he has first obtained the permission of the President. In giving such evidence he shall not criticise the policy or decisions of the Board, of the Secretary of State, of the Crown representative or of any Government in British India.

This rule shall not apply to the evidence given before statutory Committees with power to compel attendance and the giving of answers or to evidence given in judicial inquiries.

14. TAKING PART IN POLITICAL MOVEMENTS.—An officer or servant of the Board shall not take part in, or subscribe in aid of, or assist in any way, any political movement in India relating to Indian affairs. If a doubt arises as to whether any action which an officer or servant of the Board proposes to take will contravene the provisions of this rule, he shall, refer the matter to the Provincial Government through the President.

Note.—Seditious propagandism or the expression of disloyal sentiments by an officer or servant of the Board will be regarded as sufficient ground for dispensing with his services.

15. Taking part in election.—An officer or servant of the Board shall not, by canvassing or otherwise, interfere or use his influence in any way, in an election to a legislative body or to a local authority, except that he may record a vote, if he is qualified to do so. In that case he shall, as far as possible, avoid giving any indication of the direction in which he intends to vote or has voted.

This rule applies only to whole-time officers and servants.

16. VINDICATION OF ACTS AND CHARACTER OF OFFICERS OR SER-VANTS OF THE BOARD AS SUCH.—An officer or servant of the Board may not, without the previous sanction of the President, have recourse to any Court or to the press for the vindication of his official acts or character from defamatory attacks.

Nothing in this rule shall limit or otherwise affect the right of any officer or servant of the Board to vindicate his private acts or character.

17. Address while under suspension.—When an officer or servant of the Board is suspended, he is free to go wherever he likes, but he shall leave his address with the head of his office, or

if he is himself the head of an office, with the President of the Board. He shall also leave his address with the officer, if any, holding an inquiry into his conduct.

He shall obey all orders to attend any inquiry into his conduct, and if he fails to do so, the inquiry may be held in his absence.

(Forms-omitted.)

(xii) TEMPLES UNDER COURT OF WARDS.

(G. O. No. Mis., 3942, L. & M., dated 19th September, 1926.)

TEMPLES UNDER THE COURT OF WARDS—FROM THE JURISDIC-TION OF THE HINDU RELIGIOUS ENDOWMENTS BOARD.—Temple managed by the Court of Wards are, so the Government are advised, under the jurisdiction of the Hindu Religious Endowments Board, and the Government see no reason to grant them general exemption from the operation of the Act. The Hindu Religious Endowments Board is however willing to allow the following concessions to such temples so long as they continue to be under the Court's management:—

- (1) The commission due to the Board will be fixed at 5/6 per cent. instead of the maximum 1½ per cent. allowed in section 65 of the Act.
- (2) The audit of the accounts of the temples by the Examiner of Local Fund Accounts will be accepted.
- (3) So as to minimise labour and to avoid the necessity for the employment of extra establishment by the Court of Wards, the Board will accept, as far as possible, the Court of Ward's form of budget and all other statements and
- (4) The Board will accept such information as the Court of Wards is able to furnish through its own officers to enable the Board to maintain the register prescribed in section 34 (1) of the Act, provided the Court of Wards assists the Board's officers and gives all reasonable facilities to them to collect any additional information required.

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